

1600/202.

LILLY's
COLLECTION
OF
MODERN ENTRIES.
VOL. II.

COLLECTION
MODERN ENTRIES



1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

McCall
COLLECTION
Modern Pleas
OF
MODERN ENTRIES:

Open
OR
SELECT PLEADINGS

IN THE
Courts of KING's BENCH, COMMON PLEAS,
and EXCHEQUER, viz.

Declarations, Pleas in Abatement and in Bar, Replications, Rejoinders, &c.
Demurrers, Issues, Verdicts, Judgments, Forms of making up Records
of *Nisi prius*, and Entering of Judgments, &c. in most Actions. Many of
them drawn or perused by Mr. BRODERICK, CARTHEW, COMYNS, DARNEL,
HOLT, LEVINZ, LUTWYCHE, NORTHEY, PARKER, PEMBERTON, PEN-
GELLY, POLLEXFEN, RAYMOND, SALKELD, SAUNDERS, SHOWER, THOMSON,
TREVOR, WEARGE, and other learned Counsel.

AS ALSO,
Special Assignments of ERRORS, and Writs and Proceedings thereupon,
both in the said Courts and in Parliament.

WITH
The Method of suing to and reversing OUTLAWRIES by WRIT
of ERROR or otherwise.

TO WHICH IS ADDED,
A Collection of WRITS in most Cases now in Practice.
With Two TABLES, one of the NAMES of the CASES, and
the other of the PLEADINGS and WRITS.

By JOHN LILLY, Gent.

THE FIFTH EDITION, IN TWO VOLUMES.

VOL. II.

L O N D O N:

PRINTED BY A. STRAHAN AND W. WOODFALL,
LAW-PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY;
FOR J. RIVINGTON & SONS, A. STRAHAN, R. BALDWIN, E. & R. BROOKE,
G. & T. WILKIE, WHIELDON & BUTTERWORTH, W. BROWN,
W. CLARKE, & R. PHENEY.

1791.



Replevin.

Green and Alcborne.

Suffex, to wit. **B**E it remember'd that *Matthew Green* the elder, otherwise, to wit, at the county court of *Suffex* held at *Leaves* for the county aforesaid, on the 14th day of *May* in the 12th year of the reign of our lady *Anne*, by the grace of God of *Great Britain*, &c. before *Samuel Watts* and *Stephen Waller*, suitors of the same court, complained of *William Alcborne*, gent. in a plea of taking and unjustly detaining of the cattle of him the said *Matthew*, to wit, eight ewes and six lambs; which said plea, by virtue of the writ of the said lady the queen of *recordari facias*, returnable from the day of *St. Michael* in three weeks in this same term wheresoever, &c. was brought here at *Westminster* from the day of *St. Michael* in the said three weeks, at the petition of the said *William*: on which day at *Westminster* aforesaid comes as well the said *Matthew* by *John Mitbell* his attorney, as the said *William* by *John Allen* his attorney; and the same *Matthew* by his attorney aforesaid complains, that the said *William* on the 9th day of *April* in the 12th year of the reign of the lady *Anne*, now queen of *Great Britain*, &c. at *Chalwington* in the county aforesaid, in a certain place there called the *Croft*, took the cattle, to wit, eight ewes and six lambs of him the said *Matthew*, and them unjustly detained, against surety and pledges, &c. until, &c. Whereby the said *Matthew* says that he is prejudiced, and hath damage to the value of 10 l. And therefore he produces the suit, &c.

*Non prof. for
not pleading in
bar to the
avowry.*

And the said *William* by his attorney aforesaid defends the force and injury when, &c. and prays leave to imparl thereto before the lady the queen until on the octave of *St. Hilary* wheresoever, &c. and he hath, &c. The same day is given as well to the said *Matthew* as to the said *William*, &c. On which day before the said lady the queen at *Westminster* comes as well the said *Matthew* as the said *William* by their attornies aforesaid; and hereupon the said *William* farther prays leave to imparl thereto before the said lady the queen until from the day of *Easter* in 15 days wheresoever, &c. and he hath, &c. The same day is given as well to the said *Matthew* as to the said *William*, &c. On which day before the said lady the queen at *Westminster* comes as well the said *Matthew* as the said *William* by their attornies aforesaid; and upon this the said *William* by his attorney

Suggestion to
have a return.

[348]

aforesaid says, that he took the cattle at *Ripe*, otherwise *Ecklington*, in the county aforesaid; without that, that he took the cattle aforesaid at *Chalvrington* in the county aforesaid, as the said *Matthew Green* by his declaration aforesaid hath above supposed: and this he is ready to verify: wherefore he prays judgment of the writ aforesaid, and that the said writ and declaration may be quashed, &c. and to have a return of the cattle aforesaid, the same *William*, as bailiff of *Robert Rains*, well acknowledges the taking of the cattle aforesaid at *Ripe*, otherwise *Ecklington*, in the county aforesaid, in a certain place called the *Cony Earths*; and justly, &c. because he says, that the same place called the *Cony Earths* contains, and at the said time when, &c. did contain in itself five acres with the appurtenances in the said parish of *Ripe*, otherwise *Ecklington*, of which said five acres of land with the appurtenances the same *R. Rains* before the said time when, &c. was seised in his demesne as of fee, &c. and being so thereof seised, before the said time when, &c. to wit, on the 18th day of *March* in the 11th year of the reign of the lady *Anne*, now queen of *Great Britain*, &c. at the parish of *Selmiston* in the county aforesaid, the said *Robert Rains* demised to one *Matthew Green* the younger the said five acres with the appurtenances, by the name of all those two pieces or parcels of pasture called the *Cony Earths* with the appurtenances lying and being in *Ripe*, otherwise *Ecklington*, aforesaid; to have and to hold the same five acres of land with the appurtenances whereof, &c. to the said *M. Green* the younger, from the feast of the annunciation of the blessed virgin *Mary* then next ensuing until the end and term of one whole year, and so from year to year as long as both parties should please; yielding and paying therefore the yearly rent or sum of 50 s. of lawful money of *Great Britain* at the two most usual feasts or terms in the year, to wit, at the feast of *St. Michael* the archangel, and the annunciation of the blessed virgin *Mary*, by even and equal portions: by virtue of which demise, the same *M. Green* the younger afterwards, and before the said time when, &c. to wit, on the 26th day of *March* in the year last aforesaid, into the said five acres of land with the appurtenances whereof, &c. entred, and was thereof possessed; and he the said *M. Green* the younger being so thereof possessed, and the said *Robert* being seised of the reversion of the same five acres of land with the appurtenances in his demesne as of fee, and because 50 s. of the rent aforesaid for one year ended at the feast of the annunciation of the blessed virgin *Mary* in the 12th year of the reign of the lady *Anne*, now queen of *Great Britain*, &c. to the same *Robert* after that feast, and the said time when, &c. were in arrear and unpaid, the same *William*, as bailiff of the said *Robert*, well acknowledges the taking of the cattle aforesaid in the said place in which, &c. as in parcel of the tenements aforesaid with the appurtenances whereof, &c. to the same *M. Green* the younger in form aforesaid demised, and justly, &c. for the said 50 s. of the rent aforesaid to the same

Robert



Robert in form aforefaid being in arrear, &c. And this he is ready to verify : wherefore he prays judgment, and a return of the cattle aforefaid, together with his damages costs and charges in this behalf fustained, according to the form of the statute in such cafe made and provided, to be adjudged to him, &c. 21 H. 3. c. 19.

And upon this the faid *Matthew* prays leave of the court of the faid lady the queen now here until from the day of *St. Michael* in three weeks wheresoever, &c. to plead in bar to the cognifance aforefaid ; and he hath, &c. The fame day is given as well to the faid *Matthew* as to the faid *William*, &c. Before which day the faid lady the queen departed this life, and the lord *George* the now king fucceeded, and took upon himfelf the government of this kingdom : on which faid return from the day of *St. Michael* in three weeks before the faid lord the king at *Westminfter* comes as well the faid *Matthew* as the faid *William* by their attornies aforefaid : and the faid *Matthew* prays farther leave of the court of the faid lord the king now here until on the octave of *St. Hilary* wheresoever, &c. to plead in bar to the cognifance aforefaid ; and he hath, &c. The fame day is given as well to the faid *Matthew* as to the faid *William*, &c. At which faid return on the octave of *St. Hilary* before the faid lord the king at *Westminfter* comes as well the faid *Matthew* as the faid *William* by their attornies aforefaid : and the faid *Matthew* farther prays leave of the court of the faid lord the king now here until from the day of *Easter* in 15 days wheresoever, &c. to plead in bar to the cognifance aforefaid ; and he hath, &c. The fame day is given as well to the faid *Matthew* as to the faid *William*, &c. On which faid return from the day of *Easter* in 15 days before the faid lord the king at *Westminfter* comes as well the faid *Matthew* as the faid *William* by their attornies aforefaid : and the faid *Matthew* farther prays leave of the court of the faid lord the king now here until on the morrow of the holy *Trinity* wheresoever, &c. to plead in bar to the cognifance aforefaid ; and he hath, &c. The fame day is given as well to the faid *Matthew* as to the faid *William*, &c. whereupon the faid *M.* being solemnly called doth not come, nor farther profecute his writ aforefaid : therefore it is confidered, that the faid *M.* take nothing by his writ aforefaid, but be in mercy for his falfe claim therein, and that the faid *W.* do go thereof without day, &c. And hereupon the faid *W.* according to the form of the statute in fuch cafe lately made and provided, prays the writ of the lord the king now here to be directed to the fheriff of the county aforefaid, to inquire of the arrears of the rent aforefaid, and of the value of the goods and chattels aforefaid above fpecified : and to him it is granted, &c. Therefore the fheriff of the county aforefaid is commanded, that according to the form of the statute aforefaid he diligently inquire by the oath of 12 good and lawful men of his county, how much of the yearly rent aforefaid at the faid time of the taking and diftreff of the goods and chattels aforefaid was in arrear and unpaid, and

Writ of inquiry
of the arrears
and value of the
goods.
17 G. 2. c. 7.

The return.

[349]

how much the goods and chattels aforesaid so as aforesaid taken and distrained were worth, according to the value of the same: and the inquisition which, &c. let the sheriff certify here from the day of St. Michael in three weeks wheresoever, &c. under the seal, &c. and the seals, &c. On which day here comes the said *W.* by his attorney aforesaid; and the sheriff, to wit, *J. S. bart.* hath returned here a certain inquisition taken before him at *Eastgrinstead* in the county aforesaid on the fifth day of *August* last past, whereby it is found that at the said time of the taking of the goods and chattels aforesaid, 50 s. of the yearly rent aforesaid in the cognisance mentioned to be due to the said *Robert* were in arrear and unpaid; and that the goods and chattels aforesaid, so as aforesaid taken and distrained, according to the true value of the same, were worth 50 s. Therefore it is considered, that the said *W.* do recover against the said *Matthew* the said 50 s. of the rent aforesaid, being by the inquisition aforesaid in form aforesaid found, and his damages by reason of the premisses to 9 l. by the court of the lord the king now here to the same *William* at his request for his costs and charges by him in this behalf sustained, according to the form of the statute thereof lately made and provided, adjudged; which said value, costs and charges aforesaid, in the whole amount to 11 l. 10 s. &c.

Walker against Towersey and others.

M. 9 W. 3. Roll. 48.

Pract. Reg.
157.

Midd', to wit. *JOHN Towersey, Robert Wheeler, and William Stubbins*, were summoned to answer to *Thomas Walker* in a plea, why they took a silver porrenger of the said *Thomas* and unjustly detained it, against surety and pledges until, &c. And whereon the said *Thomas* by *J. L.* his attorney complains that the said *John, Robert and William*, on the first day of *May* in the 9th year of the reign of the lord *William the Third*, now king of *England*, &c. in the *Charter-house* in the county of *Middlesex* aforesaid, in a certain place there called the *Dwelling-house* of him the said *Thomas*, took the said porrenger of him the said *Thomas* and unjustly detained it, against surety and pledges until, &c. whereby the same *Thomas* says that he is prejudiced, and hath damage to the value of 30 l. And therefore he produces the suit, &c.

Cognisance by
overseers for a
poor's rate.

And the said *John, Robert and William*, by *R. H.* their attorney come and defend the force and injury when, &c. and well acknowledge the taking of the porrenger aforesaid in the said place in which, &c. and justly, &c. because they say, that at the said time when, &c. the same *John and Robert* being overseers of the poor of the parish of *St. Sepulchre* in the county of *Middlesex*, by virtue of a certain warrant under the hands and seals of *William Withers*, esq; and *Thomas Smith*, esq; then two of the justices

tices of the lord the now king, assigned to preserve the peace in the county aforesaid (*quorum unus*) to the warden of the church and the overseers of the poor of the same parish, or any of them, directed, at the said place in which, &c. demanded of the said *T. Walker* to pay them 10 s. 6 d. of lawful money upon him duly assessed towards the relief of the poor of the parish aforesaid, by the authority and according to the tenor, purport and effect, of a certain statute made and provided in a parliament of the lady *Elizabeth*, late queen of *England*, &c. held at *Westminster* in the county of *Middlesex* in the 43d year of her reign; and because the same *Thomas* then and there refused to pay the said 10 s. 6 d. to them the said *John* and *Robert*, they the same *John* and *Robert*, as overseers of the poor aforesaid, and the said *William* at their request and in their aid, for the preservation of the peace of the said lord the king, (the same *William* being then a constable within the parish aforesaid) by virtue of the statute and warrant aforesaid well acknowledge the taking of the porrenger aforesaid, the said time when, &c. in the said place in which, &c. in the name of a distress for the said 10 s. 6 d. upon him the said *T. Walker* as aforesaid assessed towards the relief of the poor of the parish aforesaid, then being in arrear and unpaid, and justly, &c. And this they are ready to verify: wherefore they pray judgment, and a return of the porrenger aforesaid, to be adjudged to them, &c.

43 El. c. 2.
§ 19.

And the said *Thomas* says, that the said *John*, *Robert* and *William*, by the reason before alledged, the taking of the porrenger aforesaid of him the said *Thomas* in the said place in which, &c. ought not to acknowledge just, because he says, that the said *John*, *Robert* and *William*, the day and year aforesaid in the declaration aforesaid mentioned, of their own wrong, without such cause by them in their cognisance aforesaid above mentioned, the porrenger aforesaid of him the said *Thomas* in the said place in which, &c. took and unjustly detained, against surety and pledges, &c. in manner and form as the said *Thomas* above against them complains: and this he prays may be inquired of by the country: and the said *John*, *Robert* and *William* likewise, &c. Therefore, &c.

Repl.
De injuria
sua propria,

Jacobson and another against Lee.

Kent, to wit. **B**E it remember'd, that *Theodore Jacobson* and *James Jacobson*, otherwise in the court of the sheriff of the county of *Kent*, held at *Penenden* in the same county, complained against *Walter Lee* in a plea of taking and unjustly detaining of the goods and chattels of them the said *Theodore* and *James*; and they found pledges to prosecute, and also to return those goods and chattels, if a return thereof should be adjudged, to wit, *J. Jacobson* and *T. Clayton*; which said plaint, at the petition of the said *Walter*, by virtue of the writ of the lord the king of *recordari facias*, was brought before the

In the county
court for goods
cast on the sea-
shore, and re-
moved by re-
cordari into
K. B.

[350]

lady the queen at *Westminster* on the morrow of the ascension of the Lord last past, and the proceedings therein being continued until this day, to wit, on the morrow of the holy *Trinity* in this same term: now on this day before the lady the queen at *Westminster* come as well the said *Theodore* and *James* by *T. P.* their attorney, as the said *Walter Lee* by *J. W.* his attorney; and upon this the same *Theodore* and *James* complain of the said *Walter* in the said plaint, to wit, that the said *Walter* 20th day of *February* in the 4th year of the reign of the lady *Anne*, now queen of *England*, &c. at the parish of *Warden* in the county aforesaid, in a certain place there called the *Sea-shore*, took the goods and chattels of them the said *Theodore* and *James*, to wit, 580 bars of iron, and unjustly detained them, against surety and pledges, until, &c. whereby they say they are prejudiced, and have damage to the value of 450*l.* And therefore they produce the suit, &c.

Avowry for
salvage.

And the said *Walter* by *J. W.* his attorney comes and defends the force and injury when, &c. and well avows the taking of the goods and chattels in the declaration aforesaid above mentioned in the said place in which, &c. and the detention thereof, &c. and justly, &c. because he says, that the goods and chattels aforesaid, together with certain other goods and chattels before the said time when, &c. to wit, 15th day of *November* in the 4th year of the reign of the lady *Anne*, now queen of *England*, &c. at *Gottenburgh* in the kingdom of *Sweden* in parts beyond the seas were loaded in and upon a certain ship called the *Corn Dragger* of *Gottenburgh* aforesaid in the kingdom of *Sweden* aforesaid, then floating in and upon the high sea near the isle of *Shippey* in the county of *Kent* aforesaid; and that the said ship so as aforesaid there floating, afterwards, to wit, the same day and year a great storm there arose, and the said ship on the shore of the said isle, to wit, at the parish of *Warden* in the county aforesaid so violently drove, that the same ship, and likewise all the said goods and chattels in the same as aforesaid then loaded, and also all the men and persons in the same ship then and there being were then and there near drowned, and in great danger of being intirely lost, so that the same men, and all the other persons in the same ship, who then and there had, and ought to have, the care of the said ship, or of the goods and chattels aforesaid, to preserve themselves, the said ship, together with all the goods and chattels aforesaid then and there in the same, deserted and left: and the same *William* farther says, that afterwards, to wit, the same day and year, certain persons unknown in the night entered into the said ship, and certain goods and chattels, parcel of the other goods and chattels above mentioned, then and there stole, and feloniously took and carried away; of which the said *Walter* afterwards, to wit, 28th day of *November* aforesaid having notice at the parish aforesaid, and being then ignorant to whom the goods and chattels aforesaid did then belong, and observing that no body did then and there take care to preserve them,
and

and the said ship being in danger of being broke in pieces and lost, to preserve the goods and chattels aforesaid in the declaration aforesaid above mentioned, lest they should be feloniously taken away or lost, the same goods and chattels out of the ship aforesaid into a certain house at the isle of *Shippey* aforesaid, with great damage, labour and pains, to the said *Walter* and his servants, and at a great expence by him the said *Walter* then and there on that account necessarily bestowed, caused to be removed, and them there safely and securely caused to be kept until, &c. And the same *Walter* in fact says, that for the said labour, pains and expence, he the said *Walter* then and there reasonably deserved to have the sum of 150 *l.* of lawful money of *England*; and that afterwards, to wit, on the first day of *December* in the fourth year abovesaid, at the parish aforesaid, the same *Walter* then first knowing that the said goods and chattels belonged to the same *Theodore* and *James*, gave notice to the said *T.* and *J.* of all the premisses, and then and there required the said *T.* and *J.* to pay him the said *Walter* the said sum of 150 *l.* for the labour, pains and expence aforesaid; and then and there offered the same *T.* and *J.* on the payment thereof to deliver to the said *T.* and *J.* all the goods and chattels aforesaid in the declaration aforesaid mentioned; but the same *T.* and *J.* to pay the same *Walter* the said sum of 150 *l.* or any part thereof, then and there absolutely refused, and yet do refuse, altho' to do it the same *T.* and *J.* often afterwards by the said *Walter* have been required; wherefore the same *Walter* took as aforesaid and detained the same goods and chattels until, &c. as he well might: and this he is ready to verify: wherefore he prays judgment, and a return of the goods and chattels aforesaid, together with his damages, costs and charges, to be adjudged to him, &c.

And the said *T.* and *J.* say, that the said *Walter*, for the reasons before alledged, the taking of the goods and chattels aforesaid in the said place in which, &c. ought not to avow just, because they say, that the said *Walter* 20th day of *February* in the 4th year of the reign of the lady queen *Anne* abovesaid in the declaration of them the said *T.* and *J.* aforesaid above specified, of his own wrong, and without any such cause by him the said *Walter* in his avowry aforesaid above alledged, in the said place in which, &c. took the goods and chattels aforesaid of them the said *T.* and *J.* in the declaration of them the said *T.* and *J.* above specified, and them unjustly detained, against surety and pledges until, &c. in manner and form as the said *T.* and *J.* in their declaration aforesaid against him complain: and this they pray may be inquired of by the country: and the said *Walter* likewise, &c. Therefore the sheriff is commanded, that he cause to come before the lady the queen from the day of *St. Michael* in three weeks wheresoever, &c. 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid, &c. Before which day, to wit, on the 17th day of *July* in the fifth year of the reign of the

De injuria sua propria.

Venire awarded.

Death of one of the plaintiffs.

[351]

faid lady the now queen the faid *Theodore* died, and the faid *James* survived him: and now at this day before the faid lady the queen at *Westminster* comes the faid *James* and *Walter* by their attornies aforefaid, and the sheriff aforefaid hath not returned the faid writ thereof, nor done any thing therein: therefore as before the sheriff of the county aforefaid is commanded, that he caufe to come before the faid lady the queen in the octave of *St. Hilary* wherefoever, &c. 12, &c. by whom, &c. The fame day is given to the parties aforefaid, &c.

Crosse against Bilson.

For taking a
mare in the
highway.
Salk. 3.
Pract. Reg. 157.

North'ton, to wit. *JOHN Bilson* was summoned to answer to *Samuel Crosse* in a plea, why he took a mare of him the faid *Samuel* and unjustly detained it, against surety and pledges, &c. And whereon the same *Samuel* by *W. L.* his attorney complains, that the faid *John* on the first day of *October* in the 12th year of the reign of the lord *William* the Third, late king of *England*, &c. at *Hardingston* in the county aforefaid, in a certain place there called the *king's highway*, a mare of him the faid *Samuel* took and unjustly detained it, against surety and pledges, until, &c. whereby the same *Samuel* says that he is prejudiced, and hath damage to the value of 10*l.* and therefore he produces the suit, &c.

Cognisance for
damage feasant.

And the faid *John Bilson* by *J. B.* his attorney comes and defends the force and injury when, &c. and as bailiff of the most noble *William* lord *Leimpster* well acknowledges the taking of the mare aforefaid the faid time when &c. in a certain place called the *queen's highway*, and justly, &c. because he says, that the faid place contains, and the faid time when, &c. did contain in itself, half a rod of land with the appurtenances in *Hardingston* aforefaid; which faid half rod of land long before and the faid time when, &c. was parcel of a certain antient messuage in *Hardingston* aforefaid; which faid messuage long before and at the faid time when, &c. was the soil and freehold of the faid lord *Leimpster*; and because the mare aforefaid the faid time when, &c. was in the faid half rod of land in which, &c. doing damage there, the faid *John*, as bailiff of the faid *William* lord *Leimpster*, well acknowledges the taking of the mare aforefaid in the place in which, &c. and justly, &c. doing damage there, &c. without that, that the faid *John* took the mare aforefaid in a certain place called the *king's highway*, as the faid *Samuel* against him hath declared: and this he is ready to verify: wherefore he prays judgment, and a return of the mare aforefaid, to be adjudged to him, &c.

Plea in maintenance of the declaration.

And the faid *Samuel* says, that the faid *John Bilson*, as bailiff of the most noble *William* lord *Leimpster*, the taking of the mare aforefaid ought not to acknowledge just, because he says, that he the faid *John Bilson* the faid time when, &c. took the mare aforefaid in the faid place then called the *king's highway*, in

manner

manner and form as the said *Samuel* above by declaring hath alledged: and this he prays may be inquired of by the country.

And the said *John* says, that he to the plea of the said *Samuel* above in replying pleaded hath no necessity, nor is by the law of the land obliged, in any manner to answer, because he says, that the same plea is not sufficient in law to maintain his declaration aforesaid: and this he is ready to verify: wherefore for want of a sufficient replication in this behalf the same *John* as before prays judgment, and that the declaration aforesaid may be quashed.

Demurrer.

And the said *Samuel*, for that he hath above alledged sufficient matter in law for him the said *Samuel* to maintain his action and declaration aforesaid, which he is ready to verify, which said matter the said *John* doth not deny, nor to the same in any wise answer, but that averment hath altogether refused to admit, prays judgment, and his damages by reason of the taking and unjust detention of the mare aforesaid, to be adjudged to him, &c. and because the justices here will advise themselves of and upon the premises before they give judgment thereon, day is given to the parties aforesaid here until from the day of St. Michael in three weeks to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here comes as well the said *Samuel* as the said *John* by their attorney aforesaid; and hereupon the premises being seen, and by the justices here more fully understood, it seems to the same justices here, that the plea of the said *Samuel* above in replying pleaded is sufficient in law to maintain his declaration aforesaid, as the said *Samuel* hath above alledged; wherefore the said *Samuel* ought to recover his damages by reason of the premises against the said *John*: but because it is unknown what damages the said *Samuel* hath sustained by reason of the premises, the sheriff is commanded, that by the oath of 12 good and lawful men of the county aforesaid he diligently inquire what damages the said *Samuel* hath sustained, as well by reason of the premises, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which he shall thereof make certify here on the octave of St. Hilary under the seal, &c. and the seals, &c. On which day here comes the said *Samuel* by his attorney aforesaid; and the sheriff, to wit, *Cesar Child*, bart. hath now returned here a certain inquisition taken before him at the town of *North'ton* in the county aforesaid on the 19th day of *January* last past by the oath of twelve, &c. whereby it is found that the said *Samuel* hath sustained damages by reason of the premises, besides his costs and charges by him about his suit in this behalf expended, to 80s. and for those costs and charges to 2d. Therefore it is considered, that the said *Samuel* do recover against the said *John* his damages aforesaid to 80s. and 2d. by the inquisition aforesaid in form aforesaid found, and also 12l. 17s. 4d. to the said *Samuel* at his request for his costs and charges aforesaid, by the court here of increase adjudged; which said damages

Joinder.

1 Sid. 189. 190.
1 Ven. 135,
136.
Cr. El. 202.

Judgment for
the plaintiff.

Inquiry awarded.

[352]
Final judgment.

damages in the whole amount to 16*l.* 17*s.* 6*d.* And the said *John* in mercy, &c.

General errors
assigned.

No original.

No warrant of
attorney.

Several certiora-
ries prayed.

Rule to return
them.

No error.

Afterwards, to wit, on day next after in this
same term, before the lady the queen at *Westminster* comes the
said *John* by *A. M.* his attorney and says, that in the record and
proceedings aforesaid, and likewise in the rendition of the judg-
ment aforesaid, there is manifest error, in this, to wit, that by
the record aforesaid it appears that the judgment aforesaid in
form aforesaid given, was given for the said *Samuel Crosse* against
him the said *John Bilson*, when by the law of the land of this
kingdom of *England* judgment in the plea aforesaid ought to have
been given for the said *John* against the said *Samuel*: there is
error also in this, to wit, that by the record aforesaid it appears
that the said *John* was summoned to answer to the said *Samuel*
in the plea aforesaid, yet no original writ between the parties
aforesaid in the plea aforesaid is filed of record, nor remains of
record in the said court of the lady the queen of the bench;
therefore in that there is manifest error: there is error also in
this, to wit, that by the record aforesaid it appears that the said
Samuel in the said court of the lady the said queen of the bench
came and appeared by *W. L.* his attorney, yet the said *W. L.*
had no warrant of attorney of record by writ of the now
lady the queen, nor without writ, to warrant his appearance
for the same *Samuel* in the plea aforesaid: there is error also in
this, to wit, that by the record aforesaid it appears that the said
John in the said court of the said lady the now queen of the
bench appeared by *William Mariot* his attorney; nevertheless *W.*
M. had no warrant of attorney of record by writ of the lady
the queen, nor without writ, to warrant his appearance for the
said *John* in the plea aforesaid: and the same *John* prays several
writs of the lady the queen, to wit, one to the chief justice
of the said lady the queen of the bench, and another writ to
the *custos brevium* of the said lady the queen of the bench aforesaid
to be directed, to certify the said lady the now queen
more fully the truth thereof: and to him they are granted, &c.
Whereupon *Tuesday* next after 15 days of the holy *Trinity* is given
by the court of the said lady the queen now here, to return to
the court of the said lady the queen, before the queen her-
self at *Westminster*, the said several writs of *certiorari* above
prayed: the same day is given to the said *Samuel* there, &c.
And the said chief justice of the bench aforesaid, and the said
custos brevium of the said lady the now queen, on that day
have not, nor hath either of them, returned the several writs
aforesaid, neither have they, or either of them, done any thing
therein: and hereupon the said *Samuel* freely here into court
comes and says, that there is no error either in the record and
proceedings aforesaid, or in the rendition of the judgment aforesaid;
and prays that the court of the said lady the queen now
here may proceed to the examination as well of the record and
proceedings aforesaid, as of the matters aforesaid above for error
assigned,

assigned, and that the judgment aforesaid may be in all things affirmed: but because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the lady the queen until in a month of *St. Michael* wheresoever, &c. to hear their judgment thereon, because the court of the said lady the queen now here thereof not yet, &c. On which day before the lady the queen at *Westminster* come the parties aforesaid by their attornies aforesaid; whereupon as well the record and proceedings aforesaid, and the judgment on the same given, as the said causes and matters above for error assigned and alleged, being seen, and by the court of the said lady the queen now here more fully understood and diligently examined, because it seems to the court of the said lady the queen here, that the judgment aforesaid is in nothing vitious or defective, and that there is no error in that record; it is considered, that the judgment aforesaid be in all things affirmed, and remain in its full force and effect, the said causes above for error assigned in any wise notwithstanding, &c. And it is farther considered by the same court, that the said *Samuel* do recover against the said *John* 12*l.* to the same *Samuel* by the court of the said lady the queen now here by his assent adjudged, according to the form of the statute thereof lately made and provided, for his costs, charges and damages, which he hath sustained by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting the said writ of the lady the queen to correct error of and upon the premises; and that the same *Samuel* may have thereof his execution, &c.

Judgment affirmed.

3 H. 7. c. 10.

Butcher and Porter.

[353]

England, to wit. **T**HE lord and lady the king and queen have sent to their trusty and beloved the mayor, bailiffs and under-steward, of their borough of *New Windsor*, and every of them, their writ close in these words, to wit, *William* and *Mary* by the grace of God, &c. To the mayor, bailiffs and under-steward, of our borough of *New Windsor*, and every of them, greeting: whereas in the record and proceedings, and also in the rendition of the judgment of a plea which was before you in our court of the borough aforesaid, without our writ, between *John Butcher* and *Thomas Porter* concerning the goods of him the said *John* taken and unjustly detained, as it is said, a manifest error hath happened, to the great damage of him the said *John* as by his complaint we have understood; we willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment be therein given, then the record and proceedings aforesaid, with all things touching them, under your seal you distinctly and openly send, and this writ, so that we may have them on the octave

Error on a judgment in the borough court of *Windsor*.

octave of St. *Hilary* wheresoever we shall then be in *England*, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein to correct that error, what of right and according to the law and custom of our kingdom of *England* shall be to be done. Witness ourselves at *Westminster* 4th day of *December* in the 2d year of our reign.

Allowed.

Skinner.

The execution of this writ appears in a certain schedule to this writ annexed.

The answer of the mayor, bailiffs and under-steward, of the borough of New Windsor, in the county of Berks.

The placita.

Letters patent.

Plaint levied.
Pledges.

Process.

The borough of *New Windsor*, to wit. **P**LEAS in the court of the lord and lady *William and Mary*, by the grace of God of *England, Scotland, France and Ireland* king and queen, defenders of the faith, &c. of record of the borough of *New Windsor*, held in the *Guildhall* of the borough aforesaid within the same borough on *Monday*, to wit, the 9th day of *June* in the 2d year of their reign, before *Thomas Buck*, gent. mayor, *Samuel Chapman* and *James Joyce*, bailiffs, and *Thomas Staples*, esq; under-steward of the borough aforesaid, by virtue of the letters patent of the lord *Charles* the Second, late king of *England*, &c. under the great seal of *England* in that behalf made, &c. At this court comes *John Butcher* in his proper person, and affirms his certain plaint against *Thomas Porter* in a plea of the taking and unjust detention of his goods and chattels, and finds pledges to prosecute that plaint, to wit, *John Doe* and *Richard Roe*, and prays the process of the court aforesaid to him thereon to be made in the plea aforesaid: and to him it is granted, &c. Wherefore at the prayer of him the said *John Butcher* at, in and by this same court now here held, *John Redman*, serjeant at mace of the borough aforesaid, and minister of the court aforesaid, is commanded, that whereas *John Butcher* to me grievously complaining hath shewn, that one *Thomas Porter* his goods and chattels, to wit, 16 pewter plates, 14 pewter dishes, 17 pipes of strong beer and ale, at *New Windsor*, and within the jurisdiction of the court of the borough aforesaid, hath taken and unjustly detained, against surety and pledges, as it is said; and because the said *John Butcher* hath found sufficient security as well to prosecute his claim as to return the goods and chattels aforesaid, if a return thereof against him in the same court shall be adjudged: therefore on the behalf of the lord and the lady the now king and queen, the same serjeant at mace of the borough aforesaid, and minister of the court aforesaid, is commanded, that he cause to be replevied and delivered to the said *John Butcher* the goods and chattels aforesaid, and that he summon the said *Thomas Porter* that he be before the mayor, bailiffs and under-steward, of the said borough at the next court of the said lord and lady the king and queen

queen of the borough aforesaid, at and in the *Guildhall* of the same borough on *Monday*, to wit, the 16th day of the said month of *June*, by virtue of the letters patent aforesaid to be held, to answer to the same *J. Butcher* in the plea aforesaid: the same day is given to the said *J. Butcher* here, &c. At which said next court of the said lord and lady the king and queen of the borough aforesaid, held on the said 16th day of *June* in the 2d year aforesaid, here, in and at the *Guildhall* of the borough aforesaid, before the said *T. Buck*, mayor, *S. Chapman* and *J. Joyce*, bailiffs, and *T. Staples*, esq; under-steward of the borough aforesaid, by virtue of the letters patent aforesaid, comes the said *J. Butcher* in his proper person, and the said serjeant at mace of the borough aforesaid, and minister of the court aforesaid, now here hath returned the precept aforesaid to him in form aforesaid directed in all things served and executed, to wit, that he, by virtue of the precept aforesaid to him in form aforesaid directed, had caused to be delivered to the within named *J. Butcher* the goods and chattels which the said *T. Porter* had taken, and had summoned the said *T. P.* that he be at the day and place aforesaid in the writ aforesaid contained, to answer to the same *J. Butcher* in the plea aforesaid, as he was commanded; and thereupon in this same court now here held, the said *J. Butcher* puts in his place *P. C.* his attorney against the said *T. Porter* in the plea aforesaid, and the said *T. Porter* puts in his place *A. M.* his attorney against the said *J. Butcher* in the plea aforesaid; upon which at this same court now here held, the said *J. Butcher* by his attorney aforesaid prays leave to declare on his plaint aforesaid in the plea aforesaid against the said *T. Porter* here until the next court of the said lord and lady the king and queen of the borough aforesaid at and in the *Guildhall* of the borough aforesaid, on *Monday*, to wit, the 23d day of the same month of *June* in the second year aforesaid, before the mayor, bailiffs and under-steward, of the borough aforesaid, by virtue of the letters patent aforesaid to be held; and he hath &c. The same day is given to the said *T. Porter* here, &c. At which said next court of the lord and lady the king and queen of the borough aforesaid, on the said 23d day of *June* in the second year aforesaid here, to wit, at and in the *Guildhall* of the borough aforesaid, held before the said *T. Buck*, gent. mayor of the borough aforesaid, *J. C.* and *J. J.* bailiffs, and *T. Staples*, esq; under-steward of the same borough, by virtue of the letters patent aforesaid, comes as well the said *J. Butcher* as the said *T. Porter* by their attornies aforesaid; and the said *J. Butcher* prays farther leave to declare on his plaint aforesaid in the plea aforesaid against the said *T. Porter* until the next court of the said lord and lady the king and queen of the borough aforesaid here, at and in the *Guildhall* of the borough aforesaid, on *Monday*, to wit, the 30th day of the then instant month of *June* in the second year aforesaid, to be held before the mayor, bailiffs, and under-steward, of the borough aforesaid, by virtue of the letters patent aforesaid; and he hath, &c. The same day

The return.

[354]

Warrants of attorney.

Leave to declare 'till the next court.

Farther leave, &c.

The declaration.

day is given to the said *T. Porter* here, &c. At which said next court of the said lord and lady the king and queen of the borough aforesaid, on the said 30th day of the month of *June* in the second year aforesaid here, to wit, at and in the *Guildhall* of the borough aforesaid, held before the said *T. Buck*, gent. *J. C.* and *J. J.* bailiffs, and *T. Staples*, esq; under-steward of the borough aforesaid, by virtue of the letters patent aforesaid, comes as well the said *J. Butcher* as the said *T. Porter* by their attornies aforesaid; and the said *J. Butcher* on his plaint aforesaid now declares against the said *T. Porter* in these words, to wit, the borough of *New Windsor* to wit, *J. Butcher* complains against *T. Porter* in a plea, why he took the goods and chattels of the said *John* and unjustly detained them, against surety and pledges, &c. And whereon the same *John* by *P. C.* his attorney complains for this, to wit, that the said *Thomas* on the twenty-second day of _____ in the second year of the

Impar lance.

reign of the lord and lady *William* and *Mary* now king and queen of *England*, &c. at *New Windsor*, in a certain place there, called the house of *Richard Sambee*, within the jurisdiction of this court, took the goods and chattels of the said *John*, to wit, 16 pewter plates, 14 pewter dishes, 17 pipes of strong beer and ale, of the said *John* and unjustly detained them, against surety and pledges until, &c. whereby the same *John* says that he is prejudiced, and hath damage to the value of 50*l.* and therefore he produces the suit, &c. and thereupon at this same court now here held the said *T. Porter* comes and defends the force and injury when, &c. and prays leave to imparl thereto here until the next court of the said lord and lady the king and queen of the borough aforesaid in and at the *Guildhall* of the borough aforesaid on *Monday*, to wit, the 11th day of the month of *August* in the second year aforesaid, before the mayor, bailiffs and under-steward, of the borough aforesaid, by virtue of the letters patent aforesaid to be held; and he hath, &c. The same day is given to the said *J. Butcher* here, &c. At which said next court of the said lord and lady the king and queen of the borough aforesaid, on the said 11th day of *August* in the second year aforesaid here, to wit, at and in the *Guildhall* of the borough aforesaid, held before the said *T. Buck*, gent. mayor, *J. C.* and *J. J.* bailiffs, and *T. Staples*, esq; under-steward of the borough aforesaid, by virtue of the letters patent aforesaid, comes as well the said *J. Butcher* as the said *T. Porter* by their attornies aforesaid; and the said *T. Porter* then and there in this same court of the said lord and lady the king and queen farther prays leave to imparl thereto until the next court of the said lord and lady the king and queen of the borough aforesaid, at and in the *Guildhall* of the same borough on *Monday*, to wit, 18th day of the same month of *August* in the 2d year aforesaid, before the mayor, bailiffs and under-steward, of the borough aforesaid, by virtue of the letters patent aforesaid to be held; and he hath, &c. The same day is given

Farther impar lance.

to the said *J. Butcher* here, &c. At which said next court of the said lord and lady the king and queen of the borough aforesaid, on the said 18th day of *August* in the second year aforesaid here, to wit, at and in the *Guildhall* of the borough aforesaid, held before the said *T. B.* gent. mayor, *J. C.* and *J. J.* bailiffs, and *T. S.* esq; under-steward of the borough aforesaid, by virtue of the letters patent aforesaid, comes as well the said *J. B.* as the said *T. P.* by their attornies aforesaid: and the said *T. P.* says, that the said *J. B.* ought not to have or maintain his action aforesaid thereof against him, because he says, that at the time of the taking of the goods and chattels aforesaid supposed to be, the property of the goods and chattels aforesaid was in one *R. Sambee* yet living, and not in the said *J. Butcher*: and this he is ready to verify: wherefore he prays judgment, and a return of the goods and chattels aforesaid, to be adjudged to him, &c. Whereupon at this same court now here held, the said *J. Butcher* prays leave to reply thereto here until the next court of the said lord and lady the king and queen of the borough aforesaid in and at the *Guildhall* of the borough aforesaid on *Monday*, to wit, the 25th day of the same month of *August* in the 2d year aforesaid, before the mayor, bailiffs and under-steward, of the borough aforesaid, by virtue of the letters patent aforesaid to be held; and he hath, &c. The same day is given to the said *T. P.* here, &c. At which said next court of the said lord and lady the king and queen of the borough aforesaid, on the said 25th day of *August* in the 2d year aforesaid here, to wit, at and in the *Guildhall* of the borough aforesaid, held before the said *T. Buck*, gent. *J. C.* and *J. J.* bailiffs, and *T. Staples*, esq; under-steward of the borough aforesaid, by virtue of the letters patent aforesaid, comes as well the said *J. Butcher* as the said *T. Porter* by their attornies aforesaid; and the said *J. Butcher* prays farther leave to reply thereto here until the next court of the said lord and lady the king and queen of the borough aforesaid, at and in the *Guildhall* of the same borough on *Monday*, to wit, the 8th day of *September* in the 2d year of the reign of the lord and lady *William* and *Mary* now king and queen of *England*, &c. before the mayor, bailiffs and under-steward, of the borough aforesaid, by virtue of the letters patent aforesaid to be held; and he hath, &c. The same day is given to the said *T. Porter* here, &c. At which said next court of the said lord and lady the king and queen of the borough aforesaid, on the said *Monday*, to wit, 8th day of *September* in the 2d year aforesaid here, to wit, at and in the *Guildhall* of the borough aforesaid, held before the said *T. Buck*, gent. mayor, *J. C.* and *J. J.* bailiffs, and *T. Staples*, esq; under-steward, of the borough aforesaid, by virtue of the letters patent aforesaid, comes as well the said *J. Butcher* as the said *T. Porter* by their attornies aforesaid; and the said *John Butcher* says, that the plea aforesaid by the said *T. Porter* above pleaded, and the matter in the same contained, are not sufficient in law to preclude

Property in a stranger.
Salk. 5.

[355]

Imparlanee.

Farther imparlanee.

Demurrer.

Impar-
lance.

Farther impar-
lance.

New officers
elected.

preclude him the said *J. Butcher* from his action aforesaid thereof against him the said *T. Porter* had, to which the same *J. Butcher* hath no necessity, nor is by the law of the land obliged, in any manner to answer: and this he is ready to verify: wherefore for want of a sufficient answer in that behalf, the same *John Butcher* prays judgment, and his damages by reason of the trespass aforesaid, to be adjudged to him, &c. Whereupon at this same court now here held on the same 8th day of *September* in the 2d year above said, the said *T. Porter* prays leave to join in demurrer here until the next court of the said lord and lady the king and queen of the borough aforesaid at and in the *Guildhall* of the borough aforesaid, on *Monday*, to wit, the 6th day of *October* in the 2d year of the reign of the lord and lady *William* and *Mary* now king and queen of *England*, &c. above said, before the mayor, bailiffs and under-steward, of the borough aforesaid, by virtue of the letters patent aforesaid to be held; and he hath, &c. The same day is given to the said *J. Butcher* here, &c. At which said next court of the said lord and lady the king and queen of the borough aforesaid, on the said *Monday*, to wit, the 6th day of *October* in the 2d year above said here, to wit, at and in the *Guildhall* of the borough aforesaid, held before the said *T. Buck*, gent. mayor, *J. Chapman* and *J. Joyce*, bailiffs, and *T. Staples*, esq; under-steward of the borough aforesaid, comes as well the said *T. Porter* as the said *J. Butcher* by their attornies aforesaid; and the said *T. Porter* prays farther leave to join in demurrer here until the next court of the said lord and lady the king and queen of the borough aforesaid at and in the *Guildhall* of the borough aforesaid, on *Monday*, to wit, the 20th day of *October* before the mayor, bailiffs and under-steward, of the borough aforesaid, by virtue of the letters patent aforesaid to be held; and he hath, &c. The same day is given to the said *J. Butcher* here, &c. And afterwards, to wit, on the same 6th day of *October* in the 2d year above said, the said *T. Buck*, mayor of the borough aforesaid, the said *J. J.* one of the bailiffs of the borough aforesaid, and *T. Staples*, esq; under-steward of the borough aforesaid, from their several and respective offices aforesaid were duly removed, and one *M. Brush*, gent. was duly elected and chosen into the office of mayor of the borough aforesaid, *N. Meystour* duly elected and chosen into the office of one of the bailiffs, and *W. Peisly*, esq; was duly elected and chosen into the office of under-steward of the same borough for one whole year from thence next ensuing, by virtue of the letters patent aforesaid: at which said next court of the said lord and lady the king and queen of the borough aforesaid, on the said *Monday*, to wit, the 20th day of *October* in the 2d year above said here, to wit, at and in the *Guildhall* of the borough aforesaid, held before the said *M. Brush*, gent. mayor, *J. C.* and *N. Meystour*, bailiffs, and *W. Peisly*, esq; under-steward of the borough aforesaid, by virtue of the letters patent aforesaid, comes as well the said *Thomas Porter* as the said *John Butcher* by their attornies aforesaid; and the

the said *Thomas Porter* prays farther leave to join in demurrer here until the next court of the said lord and lady the king and queen of the borough aforesaid at and in the *Guildhall* of the borough aforesaid, on *Monday*, to wit, the 3d day of *November* in the 2d year of the reign of the said lord and lady the now king and queen, &c. above said, before the mayor, bailiffs and under-steward, of the borough aforesaid, by virtue of the letters patent aforesaid to be held; and he hath, &c. The same day is given to the said *J. B.* here, &c. At which said next court of the said lord and lady the king and queen of the borough aforesaid, on the said *Monday*, to wit, the 3d day of *November* in the 2d year above said here, to wit, at and in the *Guildhall* of the borough aforesaid, held before the said *Moses Brush*, gent. mayor, *J. C.* and *N. M.* bailiffs, and *W. Peisly*, esq; under-steward of the borough aforesaid, by virtue of the letters patent aforesaid, comes as well the said *T. Porter* as the said *J. Butcher* by their attornies aforesaid; and the said *T. Porter* says, that the plea aforesaid by the same *T. Porter* pleaded, and the matter in the same contained, are good and sufficient in law to preclude him the said *J. Butcher* from his action aforesaid thereof against him the said *T. Porter* had; and because the said *J. Butcher* doth not answer to that plea, nor hitherto in any wise deny it, the same *T. Porter* as before prays judgment, and that the said *J. Butcher* may be precluded from his action aforesaid thereof against him the said *T. Porter* had: but because the court of the said lord and lady the king and queen now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid until the next court of the said lord and lady the king and queen of the borough aforesaid at and in the *Guildhall* of the borough aforesaid on *Monday*, to wit, 17th day of *November* in the 2d year above said, before the mayor, bailiffs and under-steward, of the borough aforesaid, by virtue of the letters patent aforesaid to be held to hear their judgment thereon, because the same court of the lord and lady the king and queen now here thereof not yet, &c. At which said next court of the said lord and lady the king and queen of the borough aforesaid, on the said *Monday*, to wit, 17th day of *November* in the 2d year above said here, to wit, at and in the *Guildhall* of the borough aforesaid, held before the said *Moses Brush*, gent. mayor, *J. C.* and *N. M.* bailiffs, and *W. Peisly*, esq; under-steward of the borough aforesaid, by virtue of the letters patent aforesaid, comes as well the said *J. Butcher* as the said *T. Porter* by their attornies aforesaid: and hereupon the premisses being seen, and by the court aforesaid here fully understood, it seems to the court here that the said plea by the said *T. Porter* in form aforesaid pleaded, and the matter in the same contained, are good and sufficient in law to preclude the same *J. Butcher* from his action aforesaid against the same *T. Porter* had: therefore it is considered by the same court, that the said *J. Butcher* do take nothing by his declaration aforesaid; but that he be in mercy for his false

Farther impar-
lance.

[356]

Joinder in de-
murrer.

Continuance.

Judgment.

claim thereof, and the said *T. Porter* do go thereof without day, and that he have a return of the goods and chattels aforesaid, to be detained to himself irreplegable for ever, &c.

Hubbard against Handford.

Replevin in
K. B.

Middlesex, **R**ICHARD Handford was summoned to answer to Richard Hubbard in a plea, why he took the goods and chattels of him the said Richard Hubbard and unjustly detained them, against surety and pledges until, &c. And whereon the same Richard Hubbard by *J. P.* his attorney complains, that the said Richard Handford on the 7th day of October in the 2d year of the reign of the lord and lady William and Mary now king and queen of England, &c. at the parish of St. Margaret Westminster in the county aforesaid, in a certain place there called *Peter-street*, took the goods and chattels following, to wit, one jack, 2 spits, 18 pewter plates, &c. (reciting several other particulars) of the said Richard Hubbard, and unjustly detained them, against surety and pledges until, &c. whereby the same Richard Hubbard says that he is prejudiced, and hath damage to the value of 20 l. And therefore he produces the suit, &c.

Sir Robert Mar-
sham seised in
fee of the place
where, &c.
demised it to
the defendant
for 51 years.

And the said Richard Handford by *J. L.* his attorney comes and defends the force and injury when, &c. and well avows the taking of the goods and chattels aforesaid in the said place where, &c. and justly, &c. because he says, that the same place, where the taking of the goods and chattels aforesaid is supposed to be, contains, and at the same time when the taking of those goods and chattels is supposed to be, did contain in itself, a certain piece or parcel of land with the appurtenances in a place called *Peter-street*, otherwise *Bowling Alley*, in the parish of St. Margaret Westminster aforesaid in the county aforesaid; of which said piece or parcel of land with the appurtenances one Robert Marsham, knt. before the said time when, &c. was seised in his demesne as of fee; and being so thereof seised, the said Robert before the said time when, &c. to wit, on the 16th day of May in the first year of the reign of the lord and lady the now king and queen, at the parish of St. Margaret Westminster aforesaid in the county aforesaid, demised the same piece or parcel of land with the appurtenances to the said Richard Handford, to hold to the same Richard and his assigns from the feast of the blessed virgin Mary then last past before the date of the same demise for the term of 51 years from thence next ensuing and fully to be compleat and ended: by virtue of which said demise the said R. Handford was possessed of the same piece or parcel of land for the term aforesaid; and so being thereof possessed, the same R. Handford afterwards and before the said time when, &c. had erected and built the said messuage or tenement on the piece or parcel of land aforesaid, and was thereof possessed; and being so thereof possessed, he the same Richard Handford before the said time when,

&c. to

Et c. to wit, on the 20th day of *December* in the first year of the reign of the said lord and lady the now king and queen above said, demised the messuage aforesaid with the appurtenances to the said *Richard Hubbard* from the feast of the birth of our Lord then next following for the term of one whole year from thence next ensuing fully to be compleat and ended; yielding therefore for the same year to the said *Richard Handford*, or his assigns, the rent of 15 l. of lawful money of *England*, at the four most usual feasts in the year, to wit, the feasts of the annunciation of the blessed virgin *Mary*, *St. John* the Baptist, *St. Michael* the archangel, and the birth of our Lord, by even and equal portions by virtue of which said demise the said *Richard Hubbard* into the messuage aforesaid with the appurtenances entered, and was thereof possessed, and the same messuage with the appurtenances for the space of three quarters of a year occupied; and because the sum of 11 l. 5 s. of the rent aforesaid, after the demise so made for the said three quarters of a year at the feast of *St. Michael* last past, and before the taking of the goods and chattels aforesaid, were to the same *Richard Handford* in arrear and unpaid, the same *Richard Handford* well avows the taking of the goods and chattels aforesaid in the said place where, Et c. and justly, Et c. for the said 11 l. 5 s. to the same *Richard Handford* in form aforesaid being in arrear, as in the messuage aforesaid with the appurtenances to the distress of the said *Richard Handford* in form aforesaid charged and bound: and this he is ready to verify: wherefore he prays judgment, and a return of the goods and chattels aforesaid, to be adjudged to him.

Who demised it the plaintiff for a year at 15 l.

and for three quarters rent arrear distress- ed.

And the said *R. Hubbard* says, that the said *R. Handford* for the reason before alledged ought not to avow the taking of the goods and chattels aforesaid in the said place where, Et c. just, because he says, that the said 11 l. 5 s. of the rent aforesaid at the said time when, Et c. were not in arrear and unpaid to the said *Richard Handford*, nor was any penny thereof at the said time when, Et c. in arrear to the said *Richard Handford*, as the said *Richard Handford* in his avowry aforesaid hath above alledged: and this he prays may be inquired of by the country: and the said *Richard Handford* likewise, Et c. Therefore the sheriff is commanded, that he cause to come before the lord and lady the king and queen from the day of the holy *Trinity* in three weeks wheresoever, Et c. 12, Et c. by whom, Et c. and who neither, Et c. to recognize, Et c. because as well, Et c. The same day is given to the parties aforesaid, Et c. On which day before the lord and lady the king and queen at *Westminster* come the parties aforesaid by their attornies aforesaid; and the sheriff hath not returned the writ, nor done any thing therein; therefore as before the sheriff is commanded, that he cause to come before the lord and lady the king and queen from the day of *St. Michael* in three weeks wheresoever, Et c. 12, Et c. by whom, Et c. and who neither, Et c. to recognize, Et c. because as well, Et c. The same day is given to the parties aforesaid, Et c.

Repl' that the rent was not in arrear.

Issue.

The Lady Digby against Barford.

Pleas before the Lord the King at Westminster of Trinity Term in the 29th Year of the Reign of the Lord Charles the Second, now King of England, &c.

The *nisi prius*
record in K. B.

The city of *Coventry*, **T**HOMAS Barford late of *Wikin* in
to wit. the county of the city of *Coventry* afore-

said, yeoman, was summoned to answer to *Mary* lady *Digby*, widow, in a plea, why he took the cattle of the said *Mary* and unjustly detained them, against surety and pledges, &c. And whereon the same *Mary* by *H. R.* her attorney complains, that the said *Thomas* on the 23d day of *October* in the 28th year of the reign of the lord *Charles* the Second, now king of *England*, &c. at the city of *Coventry* in the county of the same city in the king's highway there, took the cattle of the said lady *Mary*, to wit, 5 oxen and one heifer, and unjustly detained them, against surety and pledges until, &c. whereby the same lady *Mary* says that she is prejudiced, and hath damage to the value of 20 *l.* And therefore she produces the suit, &c.

Plea, property
in a stranger.
Salk. 5.

And the said *Thomas Barford* by *G. A.* his attorney comes and defends the force and injury when, &c. and says, that at the time of the taking of the cattle afore said above supposed to be, the property of those cattle was in one *Rebecca Crabb*, widow, administratrix of all and singular the goods and chattels, rights and credits, which belonged to *William Crabb* her late husband deceased at the time of his death; without that, that the property of the cattle afore said at the said time of the taking of them was in the said *Mary* lady *Digby*, as she by her writ and declaration afore said above thereof supposes: and this he is ready to verify: wherefore he prays judgment of the writ and declaration afore said, and a return of the cattle afore said, to be adjudged to him, &c.

Traverse.

[358]

Repl' and Issue.

And the said *Mary* lady *Digby* says, that her writ and declaration afore said ought not to be quashed, because she says, that the property of the cattle afore said at the said time of the taking of them was in the said *Mary* lady *Digby* in manner and form as she by her writ and declaration afore said above thereof hath alledged, to wit, at the city of *Coventry* afore said in the county of the same city: and this she prays may be inquired of by the country: and the said *Thomas Barford* thereof likewise: therefore the sheriffs are commanded, that they cause to come before the lord the king from the day of the holy *Trinity* in three weeks wheresoever, &c. 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties afore said, &c.

Venue.

Plea

*Pleas before the Lord the King at Westminster of Trinity Term in The placita.
the 29th Year of the Reign of the Lord Charles the Second, now
King of England, &c.*

The city of *Coventry*, **T**H E jury between *Mary lady Digby*, *The jurata.*
to wit. widow, by her attorney, plaintiff,
and *Thomas Barford* late of *Wikin* in the county of the city
of *Coventry* aforesaid, yeoman, in a plea of taking and detain-
ing of cattle is respited before the lord the king until from
the day of *St. Michael* in three weeks wheresoever, &c. unless
the justices of the lord the king, assigned to take assises in the
county of the city aforesaid, shall first come on *Wednesday* the
25th day of *July* at the city of *Coventry* aforesaid in the county of
the same city, by the form of the statute, &c. for want of
jurors, &c. Therefore let the sheriffs have the bodies, &c.
The same day is given to the parties aforesaid, &c. And
be it known, that the writ of the lord the king thereof on
the 4th day of *July* in this same term before the lord the king
at *Westminster* is delivered to the under-sheriff of the county of
the city of *Coventry* aforesaid, in form of law to be executed at
his peril, &c.

13 E. 1. c. 30.
12 E. 2. c. 4.
14 E. 3. c. 16.

Pippin and another at the suit of Maynard.

Trin. 12 W. 3. in C. B.

Declaration in Replevin for the taking of the Plaintiff's Cattle.

AND the said *Edward* and *Sarah* by *W. L.* their attorney *The defendants*
come and defend the force and injury when, &c. and say, plead property
that at the time when the taking of the cattle aforesaid is sup- in a stranger,
posed to be, the property of those cattle was in one *Stephen Hewes* and for a return
who is now surviving and in full life, to wit, at *H.* aforesaid in make cogni-
the county aforesaid; without that, that the property of the cat- sance as bailiffs
tle aforesaid at the time of the taking of them was in the said to *A.* and *B.*
Jonathan Maynard, as he by his writ and declaration aforesaid for damage-fee-
above supposes: and this they are ready to verify: wherefore sant in their
they pray judgment of the writ and declaration aforesaid, and a freehold.
return of the cattle aforesaid, to be adjudged to them, &c. and to
have a return of the cattle aforesaid, the same *Edward* and *Sarah*,
as bailiffs of *A. B.* and *C. B.* well acknowledge the taking of the
cattle aforesaid in the said place where, &c. called *Hebrom*, and
justly, &c. because they say, that the same place called *Hebrom*
contains, and at the said time when the taking of the cattle aforesaid is supposed to be, did contain in itself 40 acres of pasture with the appurtenances in *Kingsthorpe* in the county aforesaid; which said 40 acres of pasture with the appurtenances are and at the said time when, &c. were the soil and freehold of the said *A. B.* and *C. B.* And because the cattle aforesaid at the said time when, &c. were in the said place called *Hebrom* aforesaid,

eating up the grafs there then growing, and doing damage there, the same *Edward* and *Sarah*, as bailiffs of the said *A. B.* and *C. B.* well acknowledge the taking of the cattle aforesaid in the said place where, &c. and justly, &c. so doing damage there: wherefore they pray judgment, and a return of the cattle aforesaid, to be adjudged to them, &c.

Repl' and issue
on the property.

And the said *Jo. Maynard* says, that his writ and declaration aforesaid ought not to be quashed, because he says, that the property of the cattle aforesaid at the said time of the taking of them was in the said *Jonathan Maynard* in manner and form as he by his writ and declaration aforesaid hath above thereof alleged, to wit, at *Hebrom* aforesaid in the county aforesaid: and this he prays may be inquired of by the country: and the said *Edward* and *Sarah* likewise: therefore the sheriff is commanded that he cause to come, &c.

[359]

Daniel against Crogall and another.

Decl' in reple-
vin for cattle.

Southampton, **T**HOMAS *Crogall* late of *Shusstock* in the county aforesaid, yeoman, and *William Hollier* late of *Shusstock* in the county aforesaid, yeoman, were summoned to answer to *Michael Daniel* in a plea, why they took the cattle of him the said *Michael* and unjustly detained them, against surety and pledges, &c. And whereon the same *M.* by *H. R.* his attorney complains, that the said *T.* and *W.* 21st day of *May* in the 26th year of the reign of the lord *Charles* the Second, now king of *England*, &c. at the parish of *S.* aforesaid in the county aforesaid, in a certain place there called *Braggery Field*, took the cattle of him the said *M.* to wit, 7 ewes and 7 lambs and unjustly detained them, against surety and pledges until, &c. whereby the same *M.* says that he is prejudiced, and hath damage to the value of 20 *l.* And therefore he produces the suit, &c.

Avowry and
cognisance for
damage feasant.

And the said *T.* and *W.* by *W. C.* their attorney come and defend the force and injury when, &c. and the same *T. C.* well avows, and the said *W.* well acknowledges, as bailiff of him the said *T. C.* the taking of the cattle aforesaid in the said place where, &c. and justly, &c. because they say, that the same place where the taking of the cattle aforesaid is supposed to be, and at the said time when, &c. did contain in itself 2 acres of arable land, called the *Short Butts*, in the said field called *B. F.* in *S.* aforesaid; which said 2 acres of arable land with the appurtenances are and at the said time when, &c. were the soil and freehold of him the said *T. C.* and because the cattle aforesaid at the said time when, &c. were in the said 2 acres of arable land with the appurtenances eating up the grafs then in the same growing, and doing damage there, the same *T. C.* well avows, and the said *W.* as bailiff of him the said *T. C.* well acknowledges the taking of the cattle aforesaid in the said place where, &c. so doing damage there, &c. And this they are ready to
verify:

verify: wherefore they pray judgment, and a return of the cattle aforesaid, together with their damages, costs and expences, by them about their suit in this behalf sustained, according to the form of the statute in such case lately made and provided, to be adjudged to them, &c.

And the said *M.* says, that the said *T. C.* ought not to avow the taking of the cattle aforesaid in the said place where, &c. just, neither ought the said *W.* to acknowledge that taking just, because he says, that well and true it is, that the said 2 acres of arable land, called the *Short Butts* in the said field called *B. F.* in *S.* aforesaid in the county aforesaid, are and at the said time when, &c. were the soil and freehold of him the said *T. C.* as the said *T.* and *W.* by their avowry and cognisance aforesaid have above thereof alledged: but the same *W.* farther says, that long before the said time of the taking of the cattle aforesaid in the said place where, &c. one *R. W.* was seised in his demesne as of fee of and in 2 acres of arable land with the appurtenances in *B. F.* in *S.* aforesaid in the county aforesaid; and that the same *R. W.* and all those whose estate the same *R. W.* then had of and in the said 2 acres of arable land from time immemorial have had, and been accustomed to have, for themselves, their farmers and tenants of the said 2 acres of arable land with the appurtenances, common of pasture in all the said field called *B. F.* (except in the said 2 acres of land) when the said field called *B. F.* lay fallow for the whole year, and until it should be resown with corn, and in every year when the said field was sown with corn from the time of reaping or cutting the corn there growing 'till that field should be resown with corn, for a horse, mare or gelding, 10 ewes and 10 lambs, or 10 other sheep and a cow, as to the said 2 acres of arable land with the appurtenances belonging and appertaining; and the said *R. W.* being so thereof seised, afterwards and before the taking of the cattle aforesaid in the said place where, &c. to wit, on the 9th day of *April* in the 27th year of the reign of the said lord the now king, at *S.* aforesaid in the county aforesaid, demised to the said *M.* the said 2 acres of arable land with the appurtenances in *B. F.* To have and to hold to him and his assigns from the 10th day of *April* then next following unto the full end and term of 100 years from thence next ensuing and fully to be compleat and ended: by virtue of which said demise the same *M.* into the said 2 acres of arable land with the appurtenances enter'd, and was and yet is thereof possessed: and the same *M.* farther says, that at the said time when, &c. the field aforesaid called *B. F.* lay fallow, and that he the said *M.* of the said 2 acres of arable land with the appurtenances in form aforesaid being possessed, he the said *M.* at the said time when, &c. put his cattle aforesaid, to wit, 7 ewes and 7 lambs into the said 2 acres of arable land of the said *T. C.* called the *Short Butts*, to feed on the grass there growing, and to take his common aforesaid there, as he well might, until the said *T.* and *W.* took the cattle of him the said *M.* and unjustly detained

Bar to the avowry and cognisance.

That *R. W.* was seised in fee, &c. and so prescribes for common appurtenant.

Demise to the plaintiffs,

who enter'd and put his cattle into the place where, &c. to take his common.

eating up the grafs there then growing, and doing damage there, the fame *Edward* and *Sarah*, as bailiffs of the said *A. B.* and *C. B.* well acknowledge the taking of the cattle aforesaid in the said place where, &c. and justly, &c. so doing damage there: wherefore they pray judgment, and a return of the cattle aforesaid, to be adjudged to them, &c.

Repl' and issue
on the property.

And the said *Jo. Maynard* says, that his writ and declaration aforesaid ought not to be quashed, because he says, that the property of the cattle aforesaid at the said time of the taking of them was in the said *Jonathan Maynard* in manner and form as he by his writ and declaration aforesaid hath above thereof alleged, to wit, at *Hebrom* aforesaid in the county aforesaid: and this he prays may be inquired of by the country: and the said *Edward* and *Sarah* likewise: therefore the sheriff is commanded that he cause to come, &c.

[359]

Daniel against Crogall and another.

Decl' in replevin
for cattle.

Southampton, **T**HOMAS *Crogall* late of *Shustock* in the county aforesaid, yeoman, and *William Hollier* late of *Shustock* in the county aforesaid, yeoman, were summoned to answer to *Michael Daniel* in a plea, why they took the cattle of him the said *Michael* and unjustly detained them, against surety and pledges, &c. And whereon the same *M.* by *H. R.* his attorney complains, that the said *T.* and *W.* 21st day of *May* in the 26th year of the reign of the lord *Charles* the Second, now king of *England*, &c. at the parish of *S.* aforesaid in the county aforesaid, in a certain place there called *Braggerly Field*, took the cattle of him the said *M.* to wit, 7 ewes and 7 lambs and unjustly detained them, against surety and pledges until, &c. whereby the same *M.* says that he is prejudiced, and hath damage to the value of 20 *l.* And therefore he produces the suit, &c.

Avowry and
cognisance for
damage feasant.

And the said *T.* and *W.* by *W. C.* their attorney come and defend the force and injury when, &c. and the same *T. C.* well avows, and the said *W.* well acknowledges, as bailiff of him the said *T. C.* the taking of the cattle aforesaid in the said place where, &c. and justly, &c. because they say, that the same place where the taking of the cattle aforesaid is supposed to be, and at the said time when, &c. did contain in itself 2 acres of arable land, called the *Short Butts*, in the said field called *B. F.* in *S.* aforesaid; which said 2 acres of arable land with the appurtenances are and at the said time when, &c. were the soil and freehold of him the said *T. C.* and because the cattle aforesaid at the said time when, &c. were in the said 2 acres of arable land with the appurtenances eating up the grafs then in the same growing, and doing damage there, the same *T. C.* well avows, and the said *W.* as bailiff of him the said *T. C.* well acknowledges the taking of the cattle aforesaid in the said place where, &c. so doing damage there, &c. And this they are ready to verify:

verify: wherefore they pray judgment, and a return of the cattle aforesaid, together with their damages, costs and expences, by them about their suit in this behalf sustained, according to the form of the statute in such case lately made and provided, to be adjudged to them, &c.

And the said *M.* says, that the said *T. C.* ought not to avow the taking of the cattle aforesaid in the said place where, &c. just, neither ought the said *W.* to acknowledge that taking just, because he says, that well and true it is, that the said 2 acres of arable land, called the *Short Butts* in the said field called *B. F.* in *S.* aforesaid in the county aforesaid, are and at the said time when, &c. were the soil and freehold of him the said *T. C.* as the said *T.* and *W.* by their avowry and cognisance aforesaid have above thereof alledged: but the same *W.* farther says, that long before the said time of the taking of the cattle aforesaid in the said place where, &c. one *R. W.* was seised in his demesne as of fee of and in 2 acres of arable land with the appurtenances in *B. F.* in *S.* aforesaid in the county aforesaid; and that the same *R. W.* and all those whose estate the same *R. W.* then had of and in the said 2 acres of arable land from time immemorial have had, and been accustomed to have, for themselves, their farmers and tenants of the said 2 acres of arable land with the appurtenances, common of pasture in all the said field called *B. F.* (except in the said 2 acres of land) when the said field called *B. F.* lay fallow for the whole year, and until it should be resown with corn, and in every year when the said field was sown with corn from the time of reaping or cutting the corn there growing 'till that field should be resown with corn, for a horse, mare or gelding, 10 ewes and 10 lambs, or 10 other sheep and a cow, as to the said 2 acres of arable land with the appurtenances belonging and appertaining; and the said *R. W.* being so thereof seised, afterwards and before the taking of the cattle aforesaid in the said place where, &c. to wit, on the 9th day of *April* in the 27th year of the reign of the said lord the now king, at *S.* aforesaid in the county aforesaid, demised to the said *M.* the said 2 acres of arable land with the appurtenances in *B. F.* To have and to hold to him and his assigns from the 10th day of *April* then next following unto the full end and term of 100 years from thence next ensuing and fully to be compleat and ended: by virtue of which said demise the same *M.* into the said 2 acres of arable land with the appurtenances enter'd, and was and yet is thereof possessed: and the same *M.* farther says, that at the said time when, &c. the field aforesaid called *B. F.* lay fallow, and that he the said *M.* of the said 2 acres of arable land with the appurtenances in form aforesaid being possessed, he the said *M.* at the said time when, &c. put his cattle aforesaid, to wit, 7 ewes and 7 lambs into the said 2 acres of arable land of the said *T. C.* called the *Short Butts*, to feed on the grass there growing, and to take his common aforesaid there, as he well might, until the said *T.* and *W.* took the cattle of him the said *M.* and unjustly detained

Bar to the avowry and cognisance.

That *R. W.* was seised in fee, &c. and so prescribes for common appurtenant.

Demise to the plaintiffs,

who enter'd and put his cattle into the place where, &c. to take his common.

[360]

Repl^r confesses
the seisin and
the common,

and the demise,

tained them, against surety and pledges until, &c. as the said *M.* above thereof against them complains: and this the same *M.* is ready to verify: wherefore for that the said *T.* and *W.* the taking of the cattle aforesaid in the said place where, &c. above confess, the same *M.* prays judgment, and his damages by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c.

And the said *T.* and *W.* say, that well and true it is, that the said *R. W.* in the plea of him the said *M.* in bar to the avowry and cognisance aforesaid above pleaded named, before the said time when, &c. was seised in his demesne as of fee of and in the said 2 acres of arable land with the appurtenances in *B. F.* aforesaid in *S.* aforesaid; and that well and true it is, that the said *R. W.* and all they whose estate the same *R. W.* then had of and in the said 2 acres of arable land with the appurtenances, from time immemorial have had, and been accustomed to have, for themselves, their farmers and tenants, of the said 2 acres of arable land with the appurtenances, common of pasture, in all the said field called *B. F.* (except in the said 2 acres) when the said field called *B. F.* lay fallow for all the year, and until it should be re-sown with corn, and in every year when that field was sown with corn from the time of the reaping or mowing of the corn there growing until that field should be re-sown with corn, for the said one horse, mare or gelding, 10 ewes and 10 lambs, or 10 other sheep and one cow, as to the said 2 acres of land with the appurtenances belonging and appertaining; and that well and true it is, that the said *R. W.* being so seised thereof afterwards, and before the taking of the cattle aforesaid in the said place where, &c. to wit, on the said 9th day of *April* in the 27th year of the reign of the said lord the now king aforesaid, at *S.* aforesaid in the county aforesaid, demised to the said *M.* the said 2 acres of arable land with the appurtenances in *B. F.* aforesaid; to have and to hold to him and his assigns from the 10th day of *April* then next ensuing unto the full end and term of 100 years from thence next ensuing and fully to be compleat and ended: by virtue of which said demise the same *M.* into the said 2 acres of arable land with the appurtenances entered, and was and yet is thereof possessed: but the said *T.* and *W.* farther say, that the said *M.* before the said time when, &c. and the said time when, &c. put into the said 2 acres of arable land, called the *Short Butts* in *B. F.* aforesaid, being the place where, &c. 17 ewes and 17 lambs to feed on the grafs there growing; and because the same 17 ewes and 17 lambs at the said time when, &c. were in the said 2 acres of arable land with the appurtenances eating up the grafs in the same then growing, and doing damage there, (being more than the said *M.* ought to feed in the said 2 acres of arable land aforesaid) the same *T. C.* as before well avows, and the said *W.* as bailiff of the said *T. C.* well acknowledges the taking of the said 7 ewes and 7 lambs aforesaid in the said place where, &c. so doing damage

damage there, &c. without that, that the said *M.* at the said time when, &c. put into the said 2 acres of arable land the said 7 ewes and 7 lambs only: and this they are ready to verify: wherefore as before they pray judgment, and a return of the cattle aforesaid, together with their damages, costs and expences aforesaid, to be adjudged to them, &c.

and traverses
the putting in
of 7 only,

And the said *M.* as before says, that he the said *M.* at the said time when, &c. put into the said 2 acres of arable land the said 7 ewes and 7 lambs only, as he the said *M.* in his bar aforesaid hath above thereof alledged: and this he prays may be inquired of by the country: and the said *T.* and *W.* likewise, &c. Therefore the sheriff is commanded, that he cause to come before the lord the king from the day of St. *Michael* in three weeks wheresoever, &c. 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid, &c.

and issue there-
on,

AND the said *W.* by *H. S.* his attorney comes and defends the force and injury when, &c. and as bailiff of *M. G.* well acknowledges the taking of the cattle aforesaid in the said place where, &c. and justly, &c. because he says, that the same place, in which the taking of those cattle is supposed to be, contains, and at the said time when the taking of those cattle is supposed to be, did contain in itself 40 acres of land with the appurtenances in *L.* aforesaid, and that long before the said time when, &c. the said *F.* was seised of the said 40 acres of land with the appurtenances, whereof the place where, &c. is parcel, in his demesne as of fee, and the said 40. acres of land held of the said *M.* as of his manor of *B.* in the county of *S.* aforesaid, by fealty, suit of court, and the rent of 12 s. 6 d. every year, at the feast of St. *Michael* yearly to be paid; of which services the said *M.* was seised by the hands of the said *F.* as by the hands of his very tenant, to wit, of the fealty and suit of court, and of the rent aforesaid in his demesne as of fee; and because 5 l. 12 s. 6 d. of the rent aforesaid, for nine years ended at the feast of St. *Michael* in the 26th year of the reign of the said lord the now king, to the same *M.* at the said time when, &c. were in arrear and not paid, the same *W.* as bailiff of the said *M.* well acknowledges the taking of the cattle aforesaid in the said place where, &c. and justly, &c. for the same five pounds twelve shillings and six pence so in form aforesaid being in arrear, as in parcel of the said land of the said *M.* in form aforesaid held, and within the fee, &c. And this he is ready to verify: wherefore he prays judgment, and a return of the cattle aforesaid, to be adjudged to him, &c.

Cognisance as
bailiff for a
rent-charge.

[363]

And the said *F.* says, that the said *M.* was not seised of the services aforesaid by the hands of him the said *F.* as by the hands of his very tenant, as the said *W.* hath above alledged: and this he is ready to verify: wherefore for that the said *W.* the taking of the cattle aforesaid in the said place where, &c. hath above acknowledged,

Bar that he was
not seised, &c.

acknowledged, the same *F.* prays judgment, and his damages by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c.

Issue thereon.

And the said *William* (as before) says, that the said *M.* was seised of the services aforesaid by the hands of the said *F.* as by the hands of very tenant, as he hath above alledged: and of this he puts himself upon the country: and the said *F.* likewise, &c. Therefore the sheriff is commanded, that he cause to come here from the day of the holy *Trinity* in three weeks 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Legg against Stephens and others.

Declaration.

Gloucester, **T**HOMAS Stephens, esq; Robert Parker, esq; to wit. and Richard Broke, were summoned to answer to Nicholas Legg in a plea, why they took the cattle of him the said Nicholas and unjustly detained, against surety and pledges until, &c. And whereon the same Nicholas by *P. Hodges* his attorney complains, that the said Thomas, Robert and Richard, on the 10th day of November in the 32d year of the reign of the lord Charles the Second, now king of England, &c. at the parish of Old Sodbury in the county aforesaid, in a certain place there called the *Stub Riding*, took the cattle, to wit, two oxen of him the said Nicholas and unjustly detained them, against surety and pledges until, &c. whereby the same Nicholas says that he is prejudiced, and hath damage to the value of 20*l.* And therefore he produces the suit, &c.

Avowry for a distress for an amercement at a leet.

And the said *T. Stephens*, *R. Parker* and *R. Broke*, by *T. Edwards* their attorney come and defend the force and injury when, &c. and the said *T. Stephens* and *R. Parker* well avow, and the said *Richard*, as bailiff of the said *T. S.* and *R. P.* well acknowledges the taking of the cattle aforesaid in the said place where, &c. and justly, &c. because they say, that the same place, where the taking of the cattle aforesaid is supposed to be, doth contain, and at the said time, when the taking of those cattle is supposed to be, did contain in itself 80 acres of meadow with the appurtenances, called *Stub Riding*, situate in the parish of Old Sodbury, and then and from time immemorial was and yet is parcel of the manor and within the manor of Old Sodbury in the county aforesaid, and within the jurisdiction of the court-leet and view of frankpledge within specified; and that long before the said time when, &c. to wit, on the 10th day of March in the 32d year of the reign of the said lord the now king, and long before, the said *T. S. R. P.* and one *J. Neale* late of *Deane* in the county of Bedford, esq; were jointly seised of and in the said manor of Old Sodbury aforesaid with the appurtenances, situate within the parish of Old Sodbury aforesaid, in their demesne as of fee; and that at the said time when, &c. the said *N. Legg* was and yet is occupier of the said close called *Stub Riding*, and that the said *T. S. R. P.* and *J. N.* and all those

Seisin.

whose estate the same *T. R.* and *J.* have in the same manor with the appurtenances, from time immemorial have had, and been accustomed to have, within the manor aforesaid, a certain court of view of frankpledge, and all things which to a court of view of frankpledge belong, of all the inhabitants and residents within the manor aforesaid twice a year, to wit, once within a month next after the feast of *Easter*, and again within a month next after the feast of *St. Michael* the archangel, before their steward of that court for the time being within that manor yearly to be held, as to the said manor with the appurtenances belonging and appertaining: and the said *Thomas, Robert* and *Richard* farther say, that before the said time when, &c. to wit, at a court of view of frankpledge of the said *Thomas, Robert* and *John*, held at *Old Sodbury* aforesaid within the manor aforesaid, within a month next after the feast of *Easter*, to wit, on the 19th day of *April* in the 32d year of the reign of the said lord the now king of *England*, &c. before *T. Edwards*, being then steward of the said *T. Stephens, R. Parker* and *J. Neale*, of the court of view of frankpledge, by the oath of 12 free and lawful men within the parish aforesaid resident and inhabiting, then and there to inquire and present those things which to the court-leet and view of frankpledge aforesaid then belonged, then in the same court being charged and sworn, then and there in the same court it was presented, among other things, that the said *Nicholas Legg* the now plaintiff then and for three months then last past, being occupier of the said close called the *Stub Riding* within the jurisdiction of that court, had not opened the king's highway, being within the precinct of the manor aforesaid, and within the precinct of the leet aforesaid, and the jurisdiction of the said court of view of frankpledge, leading from the parish of *Yate* in the county aforesaid cross the said close called the *Stub Riding* unto and into a certain common field called *Horwood Common* within the precinct of the same manor, and within the precinct of the said leet, and the jurisdiction of the court of view of frankpledge aforesaid, which before then there within the jurisdiction of the court-leet aforesaid he had stopped up and straitened, and the same way so straitened and stopped up then and for the space of three months then last past had continued straitened and stopped up, to the common nuisance of the people of the said lord the king there by that way desiring to pass; whereupon the said *N. Legg*, the occupier of the said close called the *Stub Riding*, for the cause aforesaid, at and by the same court of view of frankpledge then and there was amerced; which said amercement by affectors then and there in the same court of view of frankpledge, to wit, *N. White* and *T. Adey* affectors in the same court, thereto then charged and sworn, then and there was duly assessed to 40*s.* and farther in the same court by the said then steward of the said court, and the jurors aforesaid, it was ordered, that the said *N. Legg* being the occupier of the close aforesaid, should open

Profession.

Court-leet.

Presentment.

[364]

For stopping
a way.Amercement
assessed.

Order to open
the way.

Notice.

Presentment
that it was not
opened.

Death of one of
the lords.

Avowry for
non-payment.

open and leave open the way aforesaid for the subjects of the lord the now king there after to travel and pass before the 23d day of *May* then next following, under the penalty of 4*l.* of lawful money of *England*, to be forfeited to the lord in default thereof: And the same *T. Stephens*, *R. Parker* and *R. Broke* farther say, that the said *N. Legg* afterwards, to wit, the same day, year and place last mentioned, had notice of the order aforesaid, and that he being as aforesaid the occupier of the close aforesaid called the *Stub Riding*, did not open the same way for the liege subjects of the said lord the king there to travel and pass at any time before the said 23d day of *May* then next ensuing, according to the form of the order aforesaid, by reason whereof at another court of view of frankpledge of the said *T. Stephens*, *R. Parker* and *J. Neale*, held at *Old Sodbury* aforesaid within the manor aforesaid, before the steward aforesaid, within one month next after the feast of *St. Michael*, to wit, on the 23d day of *October* in the 32d year of the reign of the said lord the king above-said, by the oath of 12 other free and lawful men, being then in the same court last mentioned, lawfully sworn and charged to inquire and present in form aforesaid, it was in the same court presented, that the said *N. Legg*, the occupier of the close aforesaid call the *Stub Riding*, had not opened the same way for the liege subjects of the lord the now king there to travel and pass, according to the form of the said order last mentioned in that behalf so as aforesaid then before for that purpose made; and that by reason thereof the said *N. Legg*, the occupier of the said close called the *Stub Riding*, had forfeited to the same *T. Stephens*, *R. Parker* and *J. Neale*, the lords of the court aforesaid, and of the manor aforesaid with the appurtenances being then in form aforesaid seised, the said sum and penalty of the said 4*l.* of lawful money of *England*: and the said *T. Stephens*, *Robert Parker* and *Richard* farther say, that afterwards and before the said time when, &c. to wit, 28th day of *October* in the 32d year of the reign of the said lord the now king, the said *John Neale* at *Old Sodbury* aforesaid in the county aforesaid died, whereby not only the said manor with the appurtenances came to the same *T. Stephens* and *R. Parker* by right of survivorship, but the right of having the said amercement and penalty accrued to them the said *Thomas* and *Robert*: and the same *T. Stephens*, *Robert Parker* and *Richard* farther say, that at the time of the several presentments and courts aforesaid so as aforesaid held and made, the way aforesaid was stopped and straitened, and so continued, by the said *N. Legg*, the occupier of the close aforesaid, to the common nuisance of the subjects of the said lord the king; and because the said sum and penalty of 4*l.* above mentioned at the said time when, &c. was in arrear and unpaid, altho' it was demanded of the said *N. Legg*, to wit, at *Old Sodbury* aforesaid, the same *T. Stephens* and *R. Parker* in their own right well avow, and the said *R. Broke*, as bailiff of the said *T. Stephens* and *R. Parker*,

R. Parker, and by their command, well acknowledges the taking of the cattle aforesaid, then being the cattle of the said *N. Legg* at the said time when, &c. in the said place where, &c. for the said penalty of 4*l.* being in form aforesaid due and in arrears, and justly, &c.

And the said *Nicholas* says, that neither the said *Thomas* and *Robert* the taking of the cattle aforesaid in the said place where, &c. for the reason aforesaid before alledged ought to avow just, nor the said *Richard* for the same reason the same taking in the same place ought to acknowledge just, because by protesting that there is not any such king's highway as is above supposed, for plea the same *Nicholas* says, that the way aforesaid was not straitened and stopped by the said *Nicholas* in manner and form as the said *Thomas* and *Robert* above by avowing, and the said *Richard* above by acknowledging have supposed: and this he is ready to verify: wherefore for that the said *Thomas Stephens*, *Robert Parker* and *Richard Broke*, the taking of the cattle aforesaid have above confessed, the same *Nicholas* prays judgment, and his damages by reason of the taking and unjust detention of those cattle, to be adjudged to him, &c.

And the said *Thomas Stephens*, *Robert Parker* and *Richard Broke* say, that the plea aforesaid by the said *Nicholas* above in bar to the avowry and cognisance aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to preclude them the said *Thomas*, *Robert* and *Richard*, from having their avowry and cognisance aforesaid, and that they to that plea in manner and form aforesaid pleaded have no necessity, nor are by the law of the land obliged, in any manner to answer: and this they are ready to verify: wherefore for want of a sufficient plea in this behalf, the same *Thomas*, *Robert* and *Richard*, as before pray judgment, and a return of the cattle aforesaid, together with their damages, costs and expences, by them about their suit in this behalf sustained, according to the form of the statute in such case made and provided, to be adjudged to them, &c. And for causes of demurrer in law, the same *Thomas*, *Robert* and *Richard*, according to the form of the statute in such case lately made and provided, do set down, and to the court here express the causes following, to wit, because the matter is traversed otherwise than it is alledged in the declaration, whereby the plaintiff is obliged to prove what he hath not alledged, and likewise because the matter traversed is not traversable by the laws of this kingdom of *England* in the manner in which it is traversed in the plea.

And the said *Nicholas* says, that the plea aforesaid by him the said *Nicholas* above in bar to the avowry and cognisance aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to preclude the said *Thomas*, *Robert* and *Richard*, from having their avowry and cognisance aforesaid; which said plea, and the matter in the same contained, the said *Nicholas* is ready to verify and prove, as the court, &c. And because

Bar, protesting there was no such way, says he did not stop it.

[365]
Demurer.

The causes.
27 El. c. 5.
4 Ann. c. 16.

Joinder in demurrer.

because the said *Thomas, Robert and Richard*, do not answer to that plea, nor the same hitherto in any wise deny, the same *Nicholas* as before prays judgment, and his damages aforesaid by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c. But because the court of the said lord the king here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king from the day of *St. Michael* in three weeks wheresoever, &c. to hear their judgment of and upon the premisses, because the court of the said lord the king here thereof not yet, &c.

Liddiard and Creswicke.

M. 33 C. 2.

Avowry for
damage feasant
in his freehold.

AND the said *Francis* by *Andrew Inny* his attorney comes and defends the force and injury when, &c. and well avows the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. because he says, that the same place in which, &c. is known, and at the said time when, &c. and long before was known, as well by the name of *Hannam's Common*, as by the name of *Hannam's Heath*, and contains, and at the said time when, &c. contained, in itself 30 acres of pasture with the appurtenances in the said parish of *Bitton* in the said county of *Gloucester*, which said 30 acres of pasture with the appurtenances are, and at the said time when, &c. were the soil and freehold of him the said *Francis*; and because the cattle aforesaid at the said time when, &c. were in the said place in which, &c. eating up the grass there then growing, and doing damage there, the same *Francis* in his own proper right well avows the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. so doing damage there: and this he is ready to verify: wherefore he prays judgment, and a return of the cattle aforesaid, together with his damages, costs and charges, in this behalf sustained, according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

21 H. 8. c. 19.

Bar, That
T. M. was
seised in fee,
and demised to
W. L. and the
plaintiff for
their lives.

And the said *John Liddiard* says, that the said *Francis*, for the reason before alledged, the taking of the cattle aforesaid in the said place in which, &c. ought not to avow just, because by protesting that the same place in which, &c. at the said time when, &c. was not the freehold of him the said *Francis*, as is above supposed, for plea the same *John* says, that long before the said time of the taking of the cattle aforesaid in the said place in which, &c. to wit, on the 21st day of *August* in the 10th year of the reign of the lord *James*, late king of *England*, &c. *Theodore Newton*, knt. was seised in his demesne as of fee of and in one messuage and 47 acres and a half of land arable, meadow and pasture, with the appurtenances in *Hannam* and *Bitton* in the parish of *Bitton* aforesaid in the county aforesaid; and being

so thereof seised, afterwards, to wit, on the said 21st day of *August* in the 10th year of the reign of the lord *James*, late king of *England* abovesaid, at *Bitton* abovesaid in the county abovesaid, demised the messuage abovesaid and the said forty-seven acres and a half of land arable, meadow and pasture, with the appurtenances, to *William Liddiard* and *Katherine* his wife, and him the said *John Liddiard*; to hold to the said *William Liddiard* and *Katherine* his wife for and during the term of their natural lives, and the natural life of the longer liver of them, and after their decease the remainder thereof to the said *John Liddiard* for and during the term of the natural life of him the said *John*: by virtue of which said demise the same *William* and *Katherine* afterwards of the said messuage and the said 47 acres and a half of land arable, meadow and pasture with the appurtenances, were seised in their demesne as of freehold for the term of their lives and the life of the longer liver of them, the remainder thereof after their decease to the said *John* for the term of his life so as abovesaid belonging; and the said *William* and *Katherine* being so thereof seised afterwards, to wit, on the first day of *September* in the 32d year of the reign of lord *Charles* the Second, now king of *England*, &c. at *Bitton* abovesaid in the county abovesaid died thereof seised; after the death of which said *William* and *Katherine* he the said *John*, as in his remainder abovesaid, afterwards, to wit, on the said first day of *September* in the 32d year of the reign of the lord *Charles* the Second, now king of *England*, &c. at *Bitton* abovesaid in the county abovesaid into the messuage abovesaid and the said 47 acres and a half of land arable, meadow and pasture, with the appurtenances, by virtue of the demise abovesaid entred, and was and is yet thereof seised in his demesne as of freehold for the term of his life: and the same *John* farther says, that at the time of the demise abovesaid made, he the said *Theodore Newton*, and all those whose estate the same *Theodore* then had of and in the said messuage and 47 acres and a half of land arable, meadow and pasture with the appurtenances, have had, and for time out of mind have been accustomed to have, for themselves, their farmers and tenants of the said messuage and the said 47 acres and a half of land arable, meadow and pasture, with the appurtenances, common of pasture in the said place in which, &c. for all their commonable cattle in and upon their tenements abovesaid with the appurtenances levant and couchant every year at all times of the year, as to their tenements abovesaid belonging and appertaining: by reason whereof the said *John* before the said time when, &c. to wit, on the 9th day of *September* in the 33d year of the reign of the said lord the now king, the cattle abovesaid in the declaration abovesaid above specified, being then the proper cattle of him the said *John*, upon the said 47 acres and a half of land arable, meadow and pasture, with the appurtenances, then levant and couchant, into the said common called *Hannam's Common*, being the place

[366]

The entry of the plaintiff.

Prescription for common.

in which, &c. put, as he well might, to use his common aforesaid; and the said *Francis* the said cattle, to wit, the said 30 sheep so in the said place in which, &c. put, feeding on the grass there growing, and using the common of pasture of him the said *John* there, afterwards at the said time when, &c. to wit, on the 10th day of *September* in the 33d year aforesaid, at *Bitton* aforesaid in the said place in which, &c. commonly called *Hannam's Common*, took and them unjustly detained, against surety and pledges, in manner and form as the said *John* above against him complains: and this the same *John* is ready to verify: wherefore he prays judgment, and his damages by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c.

Repl. That it
is his freehold.

Traverse of the
prescription.

And the said *Francis Creswicke* as before says, that the said 50 acres of pasture, called *Hannam's Common*, otherwise *Hannam's Heath*, are and at the said time when, &c. were the soil and freehold of him the said *Francis*; and because the cattle aforesaid at the said time when, &c. were in the said place in which, &c. eating up the grass then there growing, and doing damage there, the said *Francis* the same cattle took, as he hath above alledged; without that, that the said *Theodore*, and all those whose estate the same *Theodore* then had of and in the said messuage and 47 acres and a half of land arable, meadow and pasture with the appurtenances, have had, and from time out of mind have been accustomed to have, for themselves, their farmers and tenants, of the said messuage and the said 47 acres and a half of land arable, meadow and pasture with the appurtenances, common of pasture in the said place in which, &c. for all their commonable cattle in and upon their tenements aforesaid with the appurtenances, levant and couchant every year at all times of the year, as to their tenements aforesaid belonging and appertaining, as the said *John* in bar to the avowry aforesaid hath above alledged: and this he is ready to verify: wherefore he prays judgment, and a return of the cattle aforesaid, together with his damages, &c. to be adjudged to him, &c.

Issue on the
traverse.

And the said *John Liddiard* as before says, that the said *Theodore Newton*, and all those whose estate the same *Theodore* then had in the said messuage and 47 acres and a half of land arable, meadow and pasture with the appurtenances, have had, and from time out of mind have been accustomed to have, for themselves, their farmers and tenants of the said messuage and the said 47 acres and a half of land arable, meadow and pasture, with the appurtenances, common of pasture in the said place in which, &c. for all their commonable cattle in and upon their tenements aforesaid with the appurtenances levant and couchant every year at all times of the year, as to their tenements aforesaid belonging and appertaining, in manner and form as he the said *John Liddiard* hath above alledged: and this he prays may be inquired of by the country: and the said *Francis*

is likewise: therefore the sheriff is commanded, that he cause to come before the lord the king in the octave of St. Hilary wheresoever, &c. 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid, &c.

Greswick and Trewbody. Declaration for taking two oxen and two heifers in E. &c.

Hill. 34 & 35 C. 2.

Gloucester, **A**ND the said defendant when, &c. and as to wit. A bailiff of J. Newton, bart. well acknowledges the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. because he says, that the said close called E. in which the taking of the cattle aforesaid is supposed to be, is, and at the said time when, &c. and also from time immemorial was, a great field containing 40 acres of meadow, situate within the manor of H. in the parish of B. in the county aforesaid, in which said field very many tenants of the manor aforesaid have, and for all the time aforesaid have been accustomed and ought to have, common of pasture for all their other beasts and horse beasts in and upon their several and respective tenements, parcel of the same manor, levant and couchant, from the first Sunday next after the 10th day of August, called S. day, until the first Sunday next after the second day of February, commonly called Candlemas day, yearly and every year, as to their several and respective tenements belonging: and the said defendant farther says, that within the manor aforesaid, to wit, at that manor there is, and from time immemorial hath been, a certain laudable custom used for the preservation of the grass and the improvement of the common aforesaid in the meadow aforesaid, that as often as any person or persons at any time after the mowing and carrying away of the first mowing of the grass in the field aforesaid called E. yearly growing, and before the said first Sunday next after the said 10th day of August, commonly called S. day, in any year should put any cattle to feed in the field aforesaid, the lord of the manor aforesaid for the time being from time to time for all the time aforesaid hath used, been accustomed and ought to take, distrain and impound the cattle so being in the field aforesaid before the day aforesaid, and doing damage there, for the damage done in the field aforesaid: and the said defendant farther says, that the said plaintiff, after the first mowing of the grass in the field aforesaid in that year growing, mowed and carried away, and before the said first Sunday next after the said 10th day of August, called S. day, and before the said time when, &c. to wit, the said 8th day of August in the 34th year of the reign of the said lord the now king above-said, put the cattle in the declaration aforesaid mentioned into the said field called E. wherefore the said defendant, as bailiff of

Tenants of the manor have common in the place where, &c.

Custom of the manor as to the usage of it.

Breach of the custom.

the said *J. N.* then and long before lord of the manor aforesaid, and so thereof seised as of freehold, by his command at the said time when, *Ec.* for the cause aforesaid, well acknowledges the taking of the cattle aforesaid in the said place where, *Ec.* doing damage there, and justly, *Ec.* And this, *Ec.* Wherefore he prays judgment, and a return of the cattle aforesaid, together with his damages, costs and charges, by him about his suit in this behalf sustained, to be adjudged to him, *Ec.*

Bar, by protesting there is no such custom, that the close is within his manor.

And the said plaintiff says, that the said defendant for the reason before alledged ought not to acknowledge the taking of the cattle aforesaid in the said place where, *Ec.* just, *Ec.* because by protesting that within the said manor of *H.* there is not, nor from time, *Ec.* hath been, any such custom used for the preservation of the grass, and the improvement of the common in the field aforesaid, that as often as any person or persons at any time after the mowing and taking away of the first mowing of the grass in the field aforesaid called *E.* yearly growing, and before the said first Sunday next after the 10th day of *August* in any year should put any cattle to feed in the field aforesaid, the lord of the manor aforesaid for the time being from time to time hath used and been accustomed, and ought to take, distrain and impound the cattle so being in the field aforesaid before the said day, and doing damage there, for the damage done in the field aforesaid, in manner and form as the said defendant hath above alledged, for plea the same plaintiff says, that he the said plaintiff long before the said time when, *Ec.* and also at the said time when, *Ec.* was seised in his demesne as of fee of and in a certain manor called *H.* in the parish of *B.* aforesaid in the county aforesaid, within which said manor the said field called *E.* is, and at the said time when, *Ec.* and also from time immemorial was lying and being, and thereof parcel; and that the said defendant of his own wrong on the said 8th day of *August* in the 34th year above said, at *W.* aforesaid in the said place called *E.* took the cattle aforesaid and unjustly detained them, against surety and pledges, until, *Ec.* in manner and form as the same plaintiff above against him complains; without that, that the said close called *E.* is, and for time immemorial was, situate within the manor of the said *J. N.* of *H.* in manner and form as the said defendant hath above alledged: and this, *Ec.* Wherefore he prays judgment, and his damages by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, *Ec.*

And the said defendant as before says, that the close aforesaid called *E.* in which, *Ec.* is, and for time immemorial was, situate within the manor of the said *J. N.* of *H.* in manner and form as the said defendant hath above alledged: and of this he puts himself upon the country: and the said plaintiff likewise, *Ec.* Therefore the sheriff is commanded, *Ec.*

[368]

Traverse.

Issue on the traverse.

Bave against Creswick in replevin for taking a gelding in a place called E.

H. 34 & 35 C. 2.

AND the said defendant by, *Ec.* when, *Ec.* and well avows the taking of the gelding aforesaid in the said place in which, *Ec.* and justly, *Ec.* because he says, that the said place in which, *Ec.* contains, and at the said time when, *Ec.* did contain in itself, 17 acres of pasture with the appurtenances in the said parish of *B.* in the county aforesaid; which said 17 acres of pasture with the appurtenances are, and at the said time when, *Ec.* were, the soil and freehold of him the said defendant; and because the gelding aforesaid at the said time when, *Ec.* was in the said place in which, *Ec.* eating up the grass then there growing, and doing damage there, the same defendant in his own proper right well avows the taking of the gelding aforesaid in the said place in which, *Ec.* and justly, *Ec.* so doing damage there, *Ec.* And this, *Ec.* Wherefore he prays judgment, and a return of the gelding aforesaid, together with his damages, costs and charges in this behalf sustained, according to the form of the statute in such case made and provided, to be adjudged to him, *Ec.*

Avowry for damage-tenant.

21 H. 8. c. 19.

And the said plaintiff says, that the said defendant, for the reason before alledged, the taking of the gelding aforesaid in the said place in which, *Ec.* ought not to avow just, because by protesting that the same place in which, *Ec.* at the said time when, *Ec.* was not the freehold of him the said defendant, as above thereof is supposed, for plea nevertheless the same plaintiff says, that long before the said time of the taking of the gelding aforesaid in the said place in which, *Ec.* as also at the said time when, *Ec.* he the said plaintiff was seised of and in one capital messuage, and 200 acres of land with the appurtenances, in *B.* in the county aforesaid in his demesne as of fee; and that he the said plaintiff, and all those whose estate the same plaintiff then had of and in the said capital messuage, and 200 acres of land with the appurtenances, at the said time when, *Ec.* and also from time immemorial have had, and for all the time aforesaid have been accustomed and ought to have, common of pasture in the said place in which, *Ec.* for all their horse beasts in and upon their tenements aforesaid, levant and couchant, from the first Sunday next after the 10th day of *August*, commonly called *S.* day, until the first Sunday next after the 2d day of *February*, commonly called *Candlemas* day, yearly and every year, as to their tenements aforesaid belonging and appertaining; by reason whereof the said plaintiff after the first Sunday next after the said 10th day of *August*, and before the first Sunday next after the 2d day of *February*, to wit, on the 7th day of *September* in the 34th year of the reign of the lord the now king abovesaid, the gelding

Bar to the avowry.

Seisin in fee.

Prescription for commons

aforesaid in the declaration aforesaid above specified, then being the proper gelding of him the said plaintiff, upon his tenements aforesaid levant and couchant, into the said place in which, &c. to have his common there put, as he well might; and the said defendant the said gelding so in the said place in which, &c. put, and feeding on the grass there growing, and using the common of pasture of him the said plaintiff there, afterwards at the said time when, &c. to wit, on the said 8th day of *September* in the 34th year aforesaid, at *B.* aforesaid in the said place in which, &c. called *E.* took, and that gelding unjustly detained, against surety and pledges, in manner and form as the said plaintiff above against him complains; and this the said plaintiff is ready to verify: wherefore he prays judgment, and his damages by reason of the taking and unjust detention of the gelding aforesaid, to be adjudged to him, &c.

Traverse of the
custom.

And the said defendant as before says, that the said 17 acres of pasture with the appurtenances are, and at the said time when, &c. were, the soil and freehold of him the said defendant, as he hath above thereof alledged; without that, that the said plaintiff, and all those whose estate he at the said time when, &c. had of and in the said capital messuage and tenements aforesaid at the said time when, &c. and also from time immemorial have had, and have been accustomed and ought to have, common of pasture in the said place in which, &c. for all their horse beasts in and upon their tenements aforesaid with the appurtenances levant and couchant, from the first *Sunday* next after the 10th day of *August* until the first *Sunday* next after the 2d day of *February* yearly and every year, as to their tenements aforesaid belonging and appertaining, as the said plaintiff hath above thereof alledged: and this, &c. Wherefore as before he prays judgment, and a return of the gelding aforesaid, together with his damages, costs and charges, according to the form of the statute aforesaid, to be adjudged to him, &c.

[369]

Issue on the
traverse.

And the said plaintiff as before says, that he, and all those whose estate he at the said time when, &c. had of and in the capital messuage and tenements aforesaid at the said time when, &c. and also from time immemorial have had, and have been accustomed and ought to have, common of pasture in the said place in which, &c. for all their horse beasts in and upon their tenements aforesaid levant and couchant, from the first *Sunday* next after the 10th day of *August* until the first *Sunday* next after the 2d of *February* yearly and every year, as to their tenements aforesaid belonging and appertaining in manner and form as, &c.

Ingram and Hale at the suit of Fletcher.

M. 7 W. 3. Roll. 107.

Stafford, **J**OSEPH Ingram and John Hale were summoned to wit. **J**moned to answer to James Fletcher in a plea, why they took a cow of him the said James and unjustly detained it, against surety and pledges, &c. And whereon the said James by John Lilly his attorney complains, that the said Joseph and John on the 20th day of February in the 7th year of the reign of the lord William the Third, now king of England, &c. at Shenston in the county aforesaid, in a certain place there called the Lane, took the cow aforesaid of him the said James and unjustly detained it, against surety and pledges, until, &c. whereby the said James says that he is prejudiced, and hath damage to the value of 20*l.* and therefore he produces the suit, &c.

Declaration.

And the said Joseph and John Hale by Thomas Callove their attorney come and defend the force and injury when, &c. and as bailiffs of Rowland Fryth, gent. well acknowledge the taking of the cow aforesaid in the said place in which, &c. and justly, &c. because they say, that the same place, in which the taking of the cow aforesaid is supposed to be contains, and at the said time when the taking of the cow aforesaid is supposed to be contained in itself, an acre of land with the appurtenances in Shenston aforesaid; which said town of Shenston is, and at the said time when, &c. and also from time out of mind was, within the manor of Shenston with the appurtenances in the county aforesaid; of which said manor with the appurtenances the said Rowland is, and at the said time when, &c. and long before was, seised in his demesne as of fee; and the said Rowland, and all those whose estate he hath in the same manor with the appurtenances, for time out of mind have had, and been accustomed to have, a court-leet or view of frankpledge of the same manor, and whatever to view of frankpledge belongs, of all the inhabitants and residents of that manor, before the steward of the same court for the time being, every year within a month next after the feast of St. Michael the archangel, at that manor yearly to be held, as to the same manor with the appurtenances belonging: and the same Joseph and John farther say, that within the manor aforesaid there is, and from time out of mind hath been, such custom, that the jurors to inquire and present those things, which to that court-leet and view of frankpledge belong, charged and sworn, at the court of view of frankpledge of the manor aforesaid, held at that manor within a month next after the feast of St. Michael the archangel, yearly have chosen, and for all the time aforesaid have been accustomed to choose, a proper man from the inhabitants within the manor aforesaid to be constable of the constablewick of Shenston aforesaid, to serve for one year in that office; which said man so elected hath taken upon himself, and for all the time aforesaid hath been

Cognisance for a distress for a fine at a court-leet.

Seisin in fee.

Prescription for a court-leet.

Custom to choose a constable.

Objected, that
it should be for
one year next
ensuing.

A court leet
held.

[370]

The plaintiff
elected con-
stable,
The order of
the jury.
The penalty for
not serving.

• The chief
justice held this
to be naught ;
for said he, they
should only elect
him, and he
should have no-
tice of such
election, and
if he did not
thereupon go to
a justice of peace
to be sworn, he
should be pre-
sented for this
default at the
next court, and
should be a-
merc'd, and the
amercement af-
fer'd. The
court also held
it naught for
not laying the
notice more par-
ticular, as that
he was present
in court, or that
he had notice given that he was elected constable, and required to take an oath before a justice of peace. A second presentment *prout per record*, &c. The fine not paid, *Note*; it is said in a case in *Moore*, that the bailiffs should have had a warrant from the steward to distrain.

used and accustomed to take upon himself that office, and hath taken and been accustomed to take an oath for the due execution of that office, under a reasonable penalty, for all the time above-said, by the jurors afore-said at such court-leet and view of frankpledge in that behalf set : and the same *Joseph* and *John* farther say, that the said *Rowland* being lord of the manor afore-said, and of the same in form afore-said seised, at a court-leet or view of frankpledge of that manor, held at that manor within a month next after the feast of St. *Michael* the archangel, to wit, on the ninth day of *October* in the fifth year of the reign of the lord *William* now king and the lady *Mary* late queen of *England*, &c. before *Henry Fryth*, gent. then steward to the said *Rowland* of that court, the said *James Fletcher* then and long before being an inhabitant within the manor afore-said, at *Shenston* : fore-said, and a proper man to be constable of the said constablewick of *Shenston* afore-said by *E. Thornton*, *T. Grace*, *J. C. J. A. J. H. W. M. W. R. N. W. T. S. J. M. J. S. J. A.* and *J. D.* good and lawful men, and inhabiting within the manor afore-said, and then and there in the same court charged and sworn to inquire and present those things which to that court-leet and view of frankpledge belonged, duly and according to the custom afore-said was chosen to be constable of the constablewick of *Shenston* afore-said for one year then next ensuing to serve in that office ; and those jurors then and there in the same court ordered, that the said *James* should take his oath for the due execution of his office afore-said, under the penalty of forfeiting 40s. whereof the said *James Fletcher* immediately afterwards, to wit, the same day and year there had notice : * nevertheless the said *James* hath not taken his oath for the due execution of the office of constable afore-said, nor hath executed or taken upon himself that office, but to do it then and often afterwards there absolutely refused ; wherefore afterwards and before the said time when, &c. to wit, at a court-leet or view of frankpledge of the said manor of the said *Rowland*, held at that manor within a month next after the feast of St. *Michael* the archangel, to wit, on the 11th day of *October* in the 6th year of the reign of the said lord king *William* and the lady *Mary*, late queen of *England*, before *Henry Fryth* then steward to the said *Rowland* of that court, by *Edward Thornton*, *J. C. W. P. T. G. T. G. J. P. J. J. E. H. T. S. J. M. W. M. G. H. J. S.* the younger, and *J. A.* good and lawful men then inhabiting within the manor afore-said, then and there in the same court sworn and charged to inquire and present those things which to that court leet or view of frankpledge belonged, it was presented, that the said *James Fletcher*, because he was duly elected to be constable of the constablewick of *Shenston* afore-said at the last leet held for the manor afore-said, and under the penalty of 40s. on him set,

WAS

was ordered to take upon himself that office, and execute it, and take his oath in form aforesaid for the due execution of that office; which, or any part whereof, he had not done, wherefore he had forfeited to the lord of the manor aforesaid the said 40s. of the penalty aforesaid, then to be paid to the lord of the manor aforesaid, as by the record thereof in the custody of the said steward of the court of the manor of him the said Rowland at that manor remaining more fully appears: and because the said 40s. for that penalty to the same Rowland, so as aforesaid being lord of the manor aforesaid, at the said time when, &c. were in arrear and unpaid, the same Joseph and John Hale, as bailiffs of him the said Rowland, well acknowledge the taking of the cow aforesaid in the said place in which, &c. and justly, &c. for the same 40s. for the penalty or amercement aforesaid to the said Rowland so being in arrear and unpaid, and within the manor aforesaid, &c.

And the said James says, that by any thing by the said Joseph and John above in the cognisance aforesaid by pleading alledged, the same Joseph and John the taking of the cow aforesaid in the said place in which, &c. ought not to acknowledge just, because he says, that the plea aforesaid by them the said Joseph and John in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to acknowledge the taking of the cow aforesaid in the said place in which, &c. just, and that he to that cognisance in manner and form aforesaid made and pleaded hath no necessity, nor is by the law of the land obliged, to answer: and this he is ready to verify: wherefore for want of a sufficient plea in this behalf the same James prays judgment, and his damages by reason of the taking and unjust detention of the cow aforesaid, to be adjudged to him, &c. Demurrer.

And the said Joseph and John say, that the plea aforesaid by them the said Joseph and John in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law for them the said Joseph and John to acknowledge the taking of the cow aforesaid in the said place in which, &c. just; which said plea, and the matter in the same contained, they the said Joseph and John are ready to verify and prove, as the court, &c. And because the said James hath not pleaded or answered to that cognisance, nor hitherto any way denied it, the same Joseph and John pray judgment, and a return of the cow aforesaid, together with their damages, costs and charges, according to the form of the statute in such case made and provided, to be adjudged to them, &c. but because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the lord the king until wheresoever, &c. to hear their judgment of and upon those premises, because the court of the said lord the king now here thereof not yet, &c. Joinder in demurrer.

Sylas Titus, Esq; against Parkins, Knt.

Declaration,

3 Lev. 225.

Avowry and
cognisance for
damage feasant.Bar, that the
locus in quo is
copyhold held of
the manor of
Busbey, &c.That the defend-
ant being lord of
the manor grant-
ed it to the
plaintiff in fee,
according, &c.

Hertford, **WILLIAM** Parkyns late of *Busbey* in the county aforesaid, knt. was summoned to answer to *Sylas Titus*, esq; in a plea, why he took the cattle of him the said *Sylas* and unjustly detained them, against surety and pledges, &c. And whereon the same *Sylas* by *John Warburton* his attorney complains, that the said *William* on the 18th day of *May* in the first year of the reign of the lord *James* the Second, now king of *England*, &c. at *Busbey*, in a certain place there called *Marryhill Ground*, the cattle of him the said *Sylas*, to wit, 36 wether sheep, 12 ewe sheep and 8 lambs, took and unjustly detained them, against surety and pledges until, &c. whereby the same *Sylas* says that he is prejudiced, and hath damage to the value of 10*l.* and therefore he produces the suit, &c.

And the said *William* by *Randal Baldwin* his attorney comes and defends the force and injury when, &c. and the same *William* in his own proper right well avows, and as bailiff to *Algernon* earl of *Essex*, well acknowledges the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. because he says, that the same place, in which the taking of the cattle aforesaid is supposed to be, contains, and at the said time when the taking of the cattle aforesaid is supposed to be, did contain in itself two acres of pasture with the appurtenances in *Busbey* aforesaid; which said two acres of pasture with the appurtenances are, at and the said time when, &c. were, the soil and freehold of them the said *William* and *Algernon* earl of *Essex*; and because the cattle aforesaid at the said time when, &c. were in the said two acres of pasture eating up the grass in the same then growing, and doing damage there, the same *William* in his own proper right well avows, and as bailiff to the said *Algernon* earl of *Essex*, well acknowledges the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. so doing damage there, &c.

And the said *Sylas* says, that the said *William*, for the reason before alledged, the taking of the cattle aforesaid in the said place in which, &c. ought not in his own proper right to avow, and as bailiff of the said earl to acknowledge just, because he says, that the said two acres of pasture in which, &c. are, and at the said time when, &c. and also from time immemorial were, parcel of the manor of *Busbey* and customary land of the same manor, and demised and demiseable by copy of court-roll of that manor, by the lord or lords of the same manor, or by their steward of the court of that manor for the time being, to any person or persons willing to take them in fee-simple, or otherwise, at the will of the lord or lords, according to the custom of the manor aforesaid: and the same *Sylas* farther says, that the said *Earl* and *William* before the said time when, &c. to wit, on the 21st day of *April* in the first year of the reign of the

the said lord the now king abovefaid, were lawfully lords of the manor aforefaid; and the said earl and *William* being then lords of the manor aforefaid, the fame earl and *William* afterwards and before the faid time when, &c. to wit, on the fame 21st day of *April* in the first year abovefaid, at a court of them the said earl and *William*, of their manor aforefaid, then held for that manor within the manor at *Busbey* aforefaid in the county of *Hertford*, by one *Thomas Smith*, gent. then their steward of the court of their manor aforefaid, by copy of court roll of that manor granted the said two acres of pasture with the appurtenances in which, &c. among other things, to the said *Sylas*; to have and to hold to the fame *Sylas* his heirs and assigns for ever, at the will of the lords, according to the custom of the manor aforefaid; and the fame *Sylas*, according to the custom of the manor aforefaid, then and there was admitted tenant thereof: by virtue of which said grant and admission, the fame *Sylas* before the faid time when, &c. into the said two acres of pasture with the appurtenances in which, &c. among other things, entered, and was and yet is thereof seised in his demesne as of fee, at the will of the lords, according to the custom of the manor aforefaid; and he the said *Sylas* being so thereof seised, the fame *Sylas* before the faid time when, &c. put his cattle aforefaid into the said two acres of pasture in which, &c. to feed on the grafs there then growing, and those cattle were in the said two acres of pasture in which, &c. feeding on the grafs there then growing, until the said *William Parkins* on the said 18th day of *May* in the first year abovefaid, at *Busbey* aforefaid, in the said two acres of pasture called *Marryhill Grounds*, in which, &c. took the fame cattle of the said *Sylas* and unjustly detained them, against surety and pledges, until, &c. as the fame *Sylas* above against him complains: and this he is ready to verifiy: wherefore for that the said *William Parkins* the taking of the cattle aforefaid hath above confessed, the fame *Sylas* prays judgment, and his damages by reason of the taking and unjust detention of those cattle, to be adjudged to him, &c.

and he being
seised put in his
cattle,

and the defend-
ant distrained
'em.

And the said *W.* says, that well and true it is, that the said two acres of pasture with the appurtenances in which, &c. are, and at the faid time when, &c. and also from time immemorial were, parcel of the said manor of *Busbey*, and customary lands of the fame manor, and demised and demiseable by copy of court-roll, of that manor, by the lord or lords of the fame manor, or by their steward of the court of that manor for the time being, to any person or persons willing to take them in fee-simple, or otherwise, at the will of the lord or lords, according to the custom of the manor aforefaid; and that the said earl and *W.* before the faid time when, &c. to wit, the said 21st day of *April* in the first year of the reign of the said lord the now king abovefaid, were lawfully lords of the manor aforefaid; and that the said earl and *W.* then being lords of the manor aforefaid, the

[372]

Repl. That the
land is held of
the manor of *B.*

Grant by copy.

The yearly value.

The fine.

the same earl and *W.* afterwards and before the said time when, &c. to wit, on the said 21st day of *April* in the first year above-said, at *Busbey* afore-said in the county of *Hertford* afore-said, by the said *T. Smith*, then their steward of the court of their manor afore-said, by copy of court-roll of that manor granted the said two acres of pasture with the appurtenances in which, &c. among other things, to the same *Sylas*; to have and to hold to the same *Sylas*, his heirs and assigns for ever, at the will of the lords, according to the custom of the manor afore-said; and that the said *Sylas*, according to the custom of the manor afore-said, was then and there admitted tenant thereof; and that by virtue of the grant and admission afore-said, he the said *Sylas* before the said time when, &c. into the said two acres of pasture with the appurtenances among other things entered, and was thereof seised in his demesne as of fee at the will of the lords, according to the custom of the manor afore-said, as the said *Sylas* above by pleading hath alledged, but the said *W. Parkins* farther says, that the said two acres of pasture with the appurtenances in which, &c. together with the other lands and tenements in the same copy mentioned, and by the same copy to the said *Sylas* and his heirs granted, and to which the said *Sylas* was as afore-said admitted, at the said time of the admission of the said *Sylas* to the same, were and yet are of the clear yearly value of 28*l.* and that the said earl and *W.* by the said *T. Smith* in the said full court of the manor afore-said, held within that manor on the said 21st day of *April* in the first year of the reign of the said lord the now king above-said, he the said *T. Smith*, being then steward as afore-said of the said earl and *W.* then lords of the manor afore-said, of the said court of their manor afore-said, after the said admission of the said *S. Titus* to the said two acres in which, &c. and the said other lands and tenements by the copy afore-said made to the said *Sylas* granted, then and there did assess and appoint the sum of 35*l.* for the fine for the said grant to the said *Sylas* of the said two acres of pasture with the appurtenances in which, &c. and the other lands and tenements afore-said, by the copy afore-said in form afore-said granted, to be paid by him the said *Sylas* to the said earl and *W.* being as afore-said lords of the manor afore-said, on the first day of *May* then next ensuing, at the porch of the parish church of *Busbey* afore-said in the said county of *Hertford*; and that the said *Sylas* then and there, to wit, at the manor afore-said, of all and singular the premisses had notice: and the said *W.* farther says, that the fine afore-said for the lands and tenements by the copy afore-said in manner and form afore-said granted to the said *Sylas* was a reasonable fine; and that the said *S. Titus*, altho' he had notice from the said lords of the manor afore-said, at the court afore-said held as afore-said at the manor afore-said, on the said 21st day of *April* afore-said, of the premisses afore-said, did not pay to the said earl and *W.* lords of the manor afore-said, or either of them, the said sum of 35*l.* for the fine afore-said in form afore-said assessed, on the said first day

day of *May* then next ensuing the admission of him the said *Sylas* at the said porch of the parish church of *Busbey* afore said, but the same 35*l.* to the said earl and *W.* then and there absolutely denied and refused, and yet doth refuse, to pay; whereby the same *S. T.* hath forfeited to the said earl and *W.* being as afore said the lords of the manor afore said, whereof, *Ec.* all his customary right, estate, title and interest afore said, of and in the said two acres of pasture with the appurtenances in which, *Ec.* and the said other lands and tenements in the grant afore said specified; after which said forfeiture in form afore said made, and before the said time when, *Ec.* the said earl and *W.* being as afore said lords of the manor afore said, into the said two acres of pasture with the appurtenances in which, *Ec.* entred, and were and yet are thereof seised in their demesne as of fee; and because the cattle afore said after the entry afore said, to wit, at the said time when, *Ec.* were in the said two acres of pasture with the appurtenances in which, *Ec.* eating up the grass in the same then growing, and doing damage there, the same *W.* as before in his own proper right well avows, and as bailiff to the said earl well acknowledges the taking of the cattle afore said in the said place in which, *Ec.* and justly, *Ec.* so doing damage there: and this he is ready to verify: wherefore as before he prays judgment, and a return of the cattle afore said, together with his damages, costs and expences by him about his suit in this behalf sustained, according to the form of the statute in such case thereof lately made and provided, to be adjudged to him, *Ec.*

And the said *Sylas* by protesting that the sum afore said of 35 *l.* for the fine afore said for the said lands and tenements by the copy afore said to the said *Sylas* in manner and form afore said granted was not a reasonable fine, as the said *W.* above by pleading hath alledged, for plea the same *Sylas* says, that within the manor afore said there is, and from time immemorial hath been, such custom used and approved within that manor for all the time afore said, to wit, that every person or persons who should be admitted tenant or tenants to any customary lands or tenements of that manor by copy of court-roll of that manor, hath and have been and ought to pay to the lord or lords of the same manor for the time being, for a fine for his or their admission to such customary lands or tenements, so much money as those lands or tenements were worth by the year at the time of such admission, and no more: and the said *Sylas* in fact says, that the said two acres of pasture with the appurtenances in which, *Ec.* together with the other lands and tenements in the same copy mentioned, and by the same copy to the said *Sylas* and his heirs granted, and to which the said *Sylas* was as afore said admitted, at the time of the admission of the said *Sylas* to the same were worth, and yet are worth, by the year 28 *l.* and no more: and the same *Sylas* farther says, that at the time of his admission to the tenements afore said with the appurtenances, to wit, at the said court

Forfeiture for non-payment. Denial to pay an uncertain fine is no forfeiture. Raym. 42. Co. Ent. 647. There ought to be a demand. Cro. El. 779. Cro. Jac. 617.

21 H. 8. c. 19.

[373]

Prottesting the fine is unreasonable, pleads a custom to pay a year's value only.

The lands worth but 2*sl.* per ann. which he offer'd to pay.

of

of the manor, held within that manor on the said 21st day of *April* in the first year above said, he was ready and offered to pay to the said *W.* then one of the lords of that manor, being then and there present in his proper person, so much money as the said customary tenements with the appurtenances were worth by the year at the time of the admission of him the said *Sylas* to the same, to wit, 28*l.* of lawful money of *England*; which said 28*l.* the said *W.* then and there absolutely refused to receive or accept of the same *Sylas*: and this he is ready to verify: wherefore as before he prays judgment, and his damages by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c.

Demurrer.

And the said *W.* says, that the plea of the said *Sylas* above in rejoining pleaded, and the matter in the same contained, are not sufficient in law to preclude him the said *W.* from having his avowry and cognisance aforesaid, and that he to that plea in manner and form aforesaid pleaded hath no necessity, nor is by the law of the land obliged, to answer: and this he is ready to verify: wherefore for want of a sufficient plea in this behalf, the same *W.* as before prays judgment, and a return of the cattle aforesaid, together with his damages, costs and expences by him about his suit in this behalf sustained, according to the form of the statute in such case thereof lately made and provided, to be adjudged to him, &c. And for cause of demurrer in law to that plea, the same *W.* according to the form of the statute in such case thereof lately made and provided, sets down, and to the court here expresses this cause following, to wit, that the value of the land remains in estimation, and the custom aforesaid by the said *Sylas* above in pleading pretended and alledged is uncertain, insufficient and void in law.

The cause.
27 El. c. 5.
4 A. c. 16.

Joinder in demurrer.

And the said *Sylas*, for that he hath above alledged sufficient matter in law in his plea aforesaid above in rejoining pleaded to preclude the said *W.* from having his avowry and cognisance aforesaid, which he is ready to verify, which said matter the said *W.* doth not deny, nor thereto in any wise answer, but altogether refuses to admit that averment, as before prays judgment, and his damages by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c. And because the justices here will advise themselves of and upon the premisses before they give judgment thereon, day therefore is given to the parties aforesaid here until on the octave of *St. Hilary* to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here comes as well the said *Sylas* as the said *W.* by their attornies aforesaid; and hereupon the premisses being seen, and by the justices here more fully understood, it seems to the said justices here, that the said plea of the said *Sylas* above in rejoining pleaded, and the matter in the same contained, is sufficient in law to preclude him the said *W.* from having his avowry and cognisance aforesaid, as the said *Sylas* hath above alledged; wherefore the said *Sylas* ought to recover his damages

Judgment for the plaintiff.

damages against the said *W.* by reason of the taking and unjust detention of the cattle aforesaid: but because it is unknown what damages the said *Sylas* hath sustained by reason of the taking and unjust detention of the cattle aforesaid, the sheriff is commanded, that by the oath of good and lawful men of the county aforesaid he diligently inquire what damages the said *Sylas* hath sustained, as well by reason of the taking and unjust detention of those cattle, as for his costs and charges by him about his suit in this behalf sustained; and the inquisition which he shall thereof make, he certify here from the day of *Easter* in 15 days, under the seal, &c. and the seals, &c. On which day here comes the said *Sylas* by his attorney aforesaid; and the sheriff, to wit, *Joseph Edmunds*, esq; hath now returned here a certain inquisition taken before him at *Stevenage* in the county aforesaid on the 15th day of *April* last past, by the oath of 12, &c. whereby it is found that the said *Sylas* hath sustained damage by reason of the taking and unjust detention of the cattle aforesaid, beside his costs and charges by him about his suit in this behalf expended, to four pence, and for those costs and charges to 6 *d.* Therefore it is considered, that the said *Sylas* do recover against the said *William* his damages aforesaid to 10 *d.* by the inquisition aforesaid, in form aforesaid found, and also 9 *l.* 5 *s.* 2 *d.* to the same *Sylas*, at his request, for his costs and charges aforesaid, by the court here of increase adjudged; which said damages in the whole amount to 9 *l.* 6 *s.* And the said *William* in mercy, &c.

Inquiry awarded.

[374]
Signed 3 May
2 Jac. 2.

This judgment was affirmed on a writ of error.

Moore against Drewry.

Trin. 8 W. 3. K. B.

AND the said *W.* by *G. L.* his attorney comes and defends the force and injury when, &c. and well avows the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. because he says, that the same places in which the taking of the cattle aforesaid is supposed to be, contain, and at the said time, when the taking of those cattle is supposed to be, did contain in themselves together 90 acres of pasture with the appurtenances in *Market Stanton* aforesaid; and that long before the said time when, &c. to wit, in *Michaelmas* term in the 14th year of the reign of the lord *Charles* the Second, late king of *England*, &c. the said *Gabriel Leech* in the court of the same late king before the said late king himself (the same court then being at *Westminster* in the county of *Middlesex*) by the consideration of the same court recovered against one *William Leech*, gent. 1100 *l.* debt, and 21 *s.* for his damages which he had sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *W. Leech* is convicted, as by the record and proceedings thereof

Avowry by
lessee of tenant
by elegit for
damage-feasant.

Judgment.

Seisin.

Execution awarded on a *scire facias*.

Elegit prayed.

13 E. 1. c. 13.

thereof in the court of the lord the now king before the king himself here, to wit, at *Westminster* aforefaid remaining more fully is manifest and appears: and the said *W. Drewry* farther says, that after the rendition of that judgment, to wit, on the 22d day of *January* in the 3d year of the reign of the lord *James* the Second, late king of *England, &c.* the said *W. Leech* was seised of the said places in which, &c. (among others) in his demesne as of freehold for the term of his life; and he being so thereof seised, and the same judgment being in its full force and strength not paid or satisfied, it was in such manner thereon proceeded, that afterwards, to wit, in *Hilary* term in the 3d and 4th year of the reign of the said late king *James* the Second, in the court of the same late king before the late king himself, it was considered by the same court then here, to wit, at *Westminster* aforefaid, that the said *Gabriel* should have execution against the said *W. Leech* for the debt and damages aforefaid by the default of him the said *W. Leech*, as by the record and proceedings thereof in the court here remaining more fully is manifest and appears: and afterwards, to wit, on the 4th day of *July* in the 4th year of the reign of the said late king *James* the Second aforefaid, in the court of the said late king before the late king himself then here, to wit, at *Westminster* aforefaid came the said *Gabriel* in his proper person, and by the statute in such case lately made and provided, chose to be delivered to him all the goods and chattels of the said *W. Leech*, except his oxen and beasts of his plough, and also the one half of all the lands and tenements of the said *W. Leech*; to hold to himself the goods and chattels aforefaid as his own proper goods and chattels, and also to hold the one half aforefaid as his freehold to him and his assigns, according to the form of the statute aforefaid, until he should thereout fully levy the debt and damages aforefaid: wherefore the sheriff of the county of *Lincoln* was then and there by the same court commanded, that he the said sheriff all the goods and chattels of the said *W. Leech*, except his oxen and beasts of his plough, and also the one half of all the lands and tenements of the same *W. Leech* in his bailiwick, of which the same *W. Leech* at the said time of the rendition of the principal judgment aforefaid, or ever after, was seised in his bailiwick, should without delay cause to be delivered to the said *Gabriel*, by a reasonable price and extent, to hold to himself the goods and chattels aforefaid as his own proper goods and chattels, and also the one half of the lands and tenements aforefaid, as his freehold, to him and his assigns, according to the form of the statute aforefaid, until he should thereout fully levy the debt and damages aforefaid, and how the same sheriff should execute that writ, he should certify to the same late king *James* the Second here, to wit, at *Westminster* aforefaid on *Saturday* next after the octave of *St. Martin* then next ensuing, under the seal, &c. and the seals of them, by whose oath he should make that extent and appraisement, then and there remitting that writ to the same late king: on which day before the late king

king himself here, to wit, at *Westminster* afore said, came the said *Gabriel* in his proper person, and the then sheriff of *Lincoln*, to wit, *Anthony Eyre*, esq; to the same court then here returned a certain inquisition before him at *L.* in the same county of *Lincoln* on the fifteenth day of *November* in the fourth year of the reign of the late king *James* the Second, by the oath of twelve good and lawful men of that county taken, whereby it is found, that the said *W. Leech*, after the rendition of the principal judgment afore said, was seised of and in a certain close of land called the *Low Pasture*, and also of and in the said places in which, &c. likewise called the *Low Pastures* and *Colehil*, containing together by estimation 146 acres, the said closes called the *Low Pastures* being 120 acres, parcel thereof, of the clear yearly value in all issues, besides reprises, 48*l.* and of and in a close, &c. and that those premises are situate, lying and being in *Market Stanton* afore said, and of and in a yearly rent of 10*l.* issuing out of and from certain lands in *Sutton* in the marsh in the county afore said, then in the tenure or occupation of one *R. V.* or his assigns, and also of and in a yearly rent of 30*l.* issuing out of and from certain lands in *F.* in the county afore said, then in the tenure or occupation of *R. C.* or his assigns, in his demesne as of freehold for the term of his life; and that the said places in which, &c. and the said close called *E.* and 20*l.* of the said 30*l.* issuing out of and from the said lands in *F.* were a true and equal half of all and singular the lands and tenements afore said; and that the same sheriff the same half afore said on the day of the caption of the inquisition afore said to the said *Gabriel Leech*, by a reasonable price and extent, had caused to be delivered, to hold to him and his assigns as his freehold, according to the form of the statute afore said, until he should thereout fully levy the debt and damages afore said, as that writ commanded and required: and by the inquisition afore said it was farther found, that the said *W. Leech* at the time of the rendition of the principal judgment afore said had not, nor on the day of the caption of the inquisition afore said had any goods or chattels, or any other lands or tenements in the county afore said, to the knowledge of the jurors of that inquisition, as by the record and proceedings thereof in the court of the lord the now king before the king himself remaining more fully is manifest and appears, whereby the said *Gabriel* into the said places in which, &c. with the appurtenances (among others) entered, and was thereof possessed; and being so thereof possessed, the same *Gabriel* afterwards and before the said time when, &c. to wit, on the 2d day of *May* in the year of the Lord 1695, at *M. S.* afore said, demised and to farm let to the said *William Drewry* the said places in which, &c. with the appurtenances (among others;) to have and to hold to the same *William Drewry* from the first day of the same month of *May* unto the end and term of one year from thence next ensuing and fully to be compleat and ended: by virtue of which demise the same *William Drewry* into the same places in which, &c. with the

The inquisition return'd.

[375]

A moiety delivered.

Entry of tenant by *elegit*, and demise to the avowant.

Distress.

the appurtenances, &c. (among others) entered, and was thereof possessed until the end and expiration of that term: and because the cattle aforesaid at the said time when, &c. were in the said places in which, &c. to wit, two rams, 100 wether sheep, and 100 ewe sheep, parcel thereof, being in the said place called L. and 18 wether sheep, and 30 ewe sheep, the residue thereof, being in the said place called C. eating up the grass there then growing, and doing damage there, the same *William Drewry* well avows the taking of the cattle aforesaid in the said places in which, &c. and justly, &c. so doing damage there; with this, that the said *William Drewry* will verify that the said *William Leech* is yet surviving and in full life, to wit, at M. S. aforesaid, and that the debt and damages aforesaid to the said W. L. are yet unsatisfied, &c.

Philip Neve.

Willis and Den.

Hill. 36 & 37 C. 2. Roll. 1157.

Count on a *recordari fac'* in order to have costs where the damage is under 40s.
22 & 23 C. 2.
Rast. Entr. 570.
3 Brownl. 187.

Kent, **T**HOMAS Willis, bart. lately in the county court to wit, of A. B. esq; sheriff of the county aforesaid, held at *Maidstone* in the county aforesaid, complained against C. D. in a plea of trespass; which said plea, at the petition of the said T. W. was brought here at this day, to wit, from the day of the holy Trinity, &c. by the writ of the lord the king of *recordari facias loquelam*: and now on this day comes as well the said T. W. by S. K. his attorney, as the said C. D. by E. F. his attorney; and hereupon the same T. W. by his attorney aforesaid complains, that, &c.

If the defendant in the county pleads freehold, and the plaintiff removes the plaint without cause shewn in the end of the writ, and the plaint only is returned, and not the plea (which is necessary to be done, because the court ought not to take cognisance of a plea under 40s.) 2. How to declare—to wit, which said plaint at the petition of the said plaintiff, because the defendant in that plaint in the county court aforesaid claimed freehold, is brought here, &c.

[376]

Lambert and Thurston 1 W. & M.—Trespass *quare clausum freg'*—was removed by *recordare*, where the plaintiff declared to his damage 30s. defendant demurred, because the court had not jurisdiction of the cause where damages are under 40s. And it was urged for the plaintiff that the plaintiff had removed this cause, because the defendant had pleaded freehold, and so it is not triable in the county-court. *Co. Lit.* 118. and 2 *Inst.*

Chief justice: it shall be intended that this action was originally in this court, because it is *with force and arms*, which cannot be in a declaration in the county-court; and where

It

it is removed, the declaration ought to be without *with force and arms.*

Mead and Another at the suit of *Maidwell, Esq;*

AND the said *John* and *Aaron* by *Thomas Roberts* their attorney come and defend the force and injury when, &c. and pray judgment of the declaration aforesaid, because they say they took the sheep aforesaid, at *Geddington* aforesaid, in a certain place called *Brook Furlong*, in a certain parcel thereof, containing by estimation 3 acres of land; which said place called *Brook Furlong*, whereof, &c. is, and for time immemorial was, parcel of a certain great field called *Mill-field* in *Geddington* aforesaid, containing by estimation 100 acres; without that, that they took the sheep aforesaid in the said place called *Kettering Blake*, as the said *Thomas* by his declaration aforesaid above supposes: and this they are ready to verify: wherefore they pray judgment of that declaration, &c. and to have a return of the sheep aforesaid, the same *John* and *Aaron*, as bailiffs of one *John Hemes*, well acknowledge the taking of the sheep aforesaid in the said 3 acres of land in the said place called *Brook Furlong*, and justly, &c. because they say, that long before the said time when, &c. to wit, on the last day of *March* in the year of the Lord 1703, and always from thence afterwards hitherto, one *Cesar Child*, bart. was and yet is seised of and in the said 3 acres of land in which they took the sheep aforesaid, in his demesne as of fee; and being so thereof seised, he the said *Cesar Child* before the said time when, &c. to wit, the same day and year aforesaid, at *G.* aforesaid, demised to the said *John Hemes* (among others) the said 3 acres of land with the appurtenances; to have and to hold to the said *John Hemes* from the feast-day of the annunciation of the blessed virgin *Mary* then last past unto the full end and term of 3 years thence next ensuing and fully to be compleat and ended, and from thence from year to year as long as both parties should please, at and under a certain yearly rent between them agreed to be paid: by virtue of which said demise the said *John Hemes* afterwards and before the said time when, &c. into the said 3 acres of land in which, &c. above demised entred, and always from thence afterwards hitherto was and yet is thereof possessed at the will of the said *Cesar Child* and *John Hemes*: and because the sheep aforesaid at the said time when, &c. were in the said 3 acres of land, parcel of the said place called *Brook Furlong*, eating up the grafs there then growing, and doing damage there, the same *John Mead* and *Aaron*, as bailiffs of the said *John Hemes*, well acknowledge the taking of the sheep aforesaid in the said 3 acres of land in the said place called *Brook Furlong*, and justly, &c. so doing damage there, &c.

And the said *Thomas Maidwell* says, that his declaration aforesaid for the reason before alledged ought not to be quashed, be-

Abatement, that the taking was in another place.

Traverse.

Cognisance as bailiffs to *J. H.* for damage feasant.

Seisin in fee.

Demise to *J. H.*

Entry.

Disseise.

Issue on the traverse.

cause he says, that the said *John* and *Aaron* took the sheep aforesaid in the said place called *Kettering Blake*, as he hath above declared: and this he prays may be inquired of by the country: and the said *John* and *Aaron* likewise, &c. Therefore the sheriff is commanded, that he cause to come here from the day of the holy *Trinity* in three weeks 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties, &c.

Astill against Clarke.

Cognisance for
damage seasant.

AND the said *William* and *Robert* by *Thomas Pryor* their attorney come and defend the force and injury when, &c. and as bailiffs of *Daniel* earl of *Nottingham* well acknowledge the taking of the sheep aforesaid in the said place in which, &c. and justly, &c. because they say, that the said place, in which the taking of the sheep aforesaid is supposed to be, is and at the said time when, &c. was the soil and freehold of him the said *Daniel* earl of *Nottingham*: and because the sheep aforesaid at the said time when, &c. was in the said place in which, &c. eating up the grass there then growing, and doing damage to the said earl there, the same *William* and *Robert*, as bailiffs of the said earl, and by his command at the said time when, &c. well acknowledge the taking of the sheep aforesaid in the said place in which, &c. and justly, &c. so doing damage there, &c.

[377]

Bar to the cognisance, that before *A. B.* had any thing in the place in which, &c. queen *Eliz.* was seised in fee in right of her dutchy of *Lancaster*; and granted by her letters patent under the great seal to the corporation of *Daventre* a market in the place in which, &c. and two fairs, as by the letters patent appears. By virtue whereof the corporation were seised. Then they say, that at one of the fairs the plaintiff bought the sheep, and paid for the toll thereof, and had the sheep in his custody until taken away by the defendants.

And the said *John Astill* says, that the said *William Clarke* the younger and *Robert Varnham* for the reason before alledged, as bailiffs of the said *Daniel* earl of *Nottingham*, the taking of the sheep aforesaid in the said place in which, &c. ought not to acknowledge just, because he says, that long before the said earl of *Nottingham* had any thing in the said place in which, &c. the lady *Elizabeth*, late queen of *England*, was seised in her demesne as of fee in the right of her dutchy of *Lancaster* of and in the manor of *Daventre* in the said county of *North'ton* with the appurtenances, whereof the said place in which, &c. then was parcel; and being so thereof seised, she the said lady *Q. Elizabeth* on the 26th day of *March* in the 18th year of her reign, by her letters patent under the great seal of *England* sealed, bearing date at *Westminster* the said 26th day of *March* in the 18th year of her reign aforesaid, of her special grace for herself, her heirs and successors, gave and granted to the bailiff, burgesses and commonalty of the borough of *Daventre* in the county of *North'ton*, and their successors, that they from thenceforth for ever should have and hold, and might have and hold within the borough aforesaid, the precincts and liberties of the same, two markets or fairs yearly to be held and kept there, to wit, one fair on the *Tuesday* next after the feast of *Easter* continually for two days from thence next ensuing to continue, and one fair on the day of *St. Matthew* the apostle, and continually

for two days from thence next ensuing likewise to continue, together with a court of pie-powder, and with all profits, commodities and emoluments whatever from such markets or fairs coming, happening, arising or contingent, and with all liberties and free customs to such markets or fairs belonging or appertaining, as by the letters patent aforesaid, which the same *John* sealed under the great seal of *England* here in court produces, more fully appears: by virtue of which said grant the said bailiff, burgeses and commonalty of the borough of *Daventre* aforesaid, and their successors, were seised, and yet are seised, as of fee and right, in the right of their corporation aforesaid, of and in a fair yearly to be held in the said place in which, &c. called the *High-street*, being within the borough of *Daventre* aforesaid, on the said *Tuesday* next after the feast of *Easter*, and continually for two days from thence next ensuing, and of and in another fair yearly there to be held on the day of *St. Matthew* the apostle, and continually for two days from thence next ensuing, with all liberties and free customs to such fairs belonging: and the same *John* farther says, that at a fair held in the said place in which, &c. within the borough of *Daventre* aforesaid, on the said 14th day of *April* in the 8th year of the reign of the lord the now king aforesaid, being *Tuesday* next after the feast of *Easter* last past, he the said *John* then and there in the said place in which, &c. called the *High-street* within the borough of *Daventre* aforesaid, in full and open fair there bought of a certain person unknown the sheep aforesaid, and the customary toll for sheep in that fair bought, payable then and there to the said bailiff, burgeses and commonalty of the borough of *Daventre* aforesaid paid; whereupon the sheep aforesaid then and there in the custody of him the said *John* lawfully being, they the said *William* and *Robert* that sheep of him the said *John* in the said place in which, &c. in that fair then took and unjustly detained, in manner and form as the same *John* above against them complains: and this the same *John* is ready to verify: wherefore for that the said *William* and *Robert* the taking of the sheep aforesaid above acknowledge, the same *John* prays judgment, and his damages by reason of the taking and unjust detention of that sheep, to be adjudged to him, &c.

And the said *Robert Varnham* and *William Clarke* say, that the plea aforesaid of the said *John Asill* above in bar to the cognizance aforesaid pleaded is not sufficient in law to preclude them the said *William* and *Robert*, as bailiffs of the said *Daniel* earl of *Nottingham*, from justly acknowledging the taking of the sheep aforesaid in the said place in which, &c. and that they to that plea in manner and form aforesaid pleaded have no necessity, nor are by the law of the land obliged, to answer: and this they are ready to verify: wherefore for want of a sufficient plea of the said *John* in this behalf, the same *William* and *Robert* pray judgment, and a return of the sheep aforesaid, together with their damages, &c. to be adjudged to them, &c.

Demurres.

Replevin.

And the said *John*, for that he hath above alledged sufficient matter in law for him the said *John* to maintain his action aforesaid against the said *William* and *Robert* had, which said matter the said *William* and *Robert* do not deny, nor in any wise answer to it, but altogether refuse to admit that averment, prays judgment, and his damages by reason of the taking and unjust detention of the sheep aforesaid, to be adjudged to him, &c. And because, &c.

In this case the question was, whether the grant under the great seal of a privilege in dutchy lands out of a dutchy, were good? or whether it ought not to have been under the dutchy seal? and after great deliberation the court gave judgment for the plaintiff, that it was.

[378]

Frogat and Marryot.

That they took the cattle in *A.* and traverse the taking in *B.* and for a return avow for damage. seasant.

1 Vern. 127.
That it is not
traversable.

AND the said *T. M. A. W. T. R. A. H.* and *J. M.* by *John Lilly* their attorney come and defend the force and injury when, &c. and say, that they took the cattle aforesaid at *Bradfield* in the parish of *Ecclesfield* in the county of *York*, in a certain place there called *Mosker*; without that, that they took the cattle aforesaid at the parish of *Kathersedge* in the said county of *Derby*, as the said *John* by his declaration aforesaid hath above supposed: and this they are ready to verify: wherefore they pray judgment of that declaration, &c. and to have a return of the cattle aforesaid, the same *Thomas*, &c. in their own right well avow, and the said *Joseph*, as bailiff of them the said *Thomas*, &c. well acknowledges the taking of the cattle aforesaid, at *Bradfield* aforesaid in the parish of *Ecclesfield* aforesaid in the county of *York* aforesaid, in the said place there called *Mosker*, and justly, &c. because they say, that the same place called *Mosker* contains, and at the said time, when the taking of the cattle aforesaid is supposed to be, did contain, in itself 50 acres of pasture with the appurtenances in *Bradfield* in the parish of *Ecclesfield* aforesaid in the county of *York* aforesaid; which said 50 acres of pasture with the appurtenances are, and at the said time when, &c. were, the soil and freehold of the said *Thomas*, &c. And because the cattle aforesaid at the said time when, &c. were in the same place called *Mosker*, in the parish of *Ecclesfield* aforesaid, eating up the grass there then growing, and doing damage there, the same *Thomas*, &c. in their own right well avow, and the said *Joseph*, as bailiff of them the said *Thomas*, &c. well acknowledges the taking of the cattle aforesaid in the said place called *Mosker* in *Bradfield* in the parish of *Ecclesfield* aforesaid, and justly, &c. so doing damage there, &c.

L. Agar.

Issue on the
traverse.

And the said *John Frogat* says, that the declaration aforesaid by any thing before alledged ought not to be quashed, because he
says,

says, that the said *T. M. &c.* took the cattle aforesaid at the said parish of *H.* in the county of *Derby* aforesaid, to wit, in the said place called *Mosker*, in the declaration of him the said *John Frogat* above mentioned, as he the same *John* above thereof against them complains : and this he prays may be inquired of by the country : and the said *T. M. &c.* thereof likewise : therefore the sheriff is commanded, that he cause to come before the lord the king on the octave of the purification of the blessed *Mary* wheresoever, *&c.* 12, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* because as well, *&c.* The same day is given to the parties aforesaid, *&c.*

Rescous.

[377]

Burnham against Goodman.

EDWARD Goodman late of *Staverton* in the county aforesaid, yeoman, was attached to answer to *Dorothy Burnham*, widow, in a plea, why whereas the same *Dorothy* in her fee, at *Staverton* in the county aforesaid, for rent to her due by *R. G.* her servant, had caused to be taken one cow, and that cow, according to the law and custom of the kingdom of *England*, had there impounded, the said *Edward* that pound with force and arms broke, and the cow aforesaid from thence took and carried away, and other injuries to the same *Dorothy* did, to the great damage of her the said *Dorothy*, and against the peace of the lord the now king, *&c.* And whereon the same *Dorothy* by *J. B.* her attorney complains, that whereas certain tenements, to wit, one messuage and one yard-land with the appurtenances in *Staverton* aforesaid were held by one *T. M.* of one *W. B.* by the yearly rent of 3 *s.* at the feast of *St. Michael* the archangel yearly to be paid, of which said rent the same *W. B.* was seised by the hands of the said *T. M.* as by the hands of his very tenant ; and being so thereof seised, the same *William* at *Staverton* aforesaid made his last will and testament in writing, and by the same his last will gave and devised to the said *Dorothy* the rent aforesaid (among others) ; to have and to hold to the said *Dorothy* for the term of her life, and afterwards at *Staverton* aforesaid died of the rent aforesaid so as aforesaid seised ; after whose death she the same *Dorothy* was seised of the rent aforesaid, in her demesne as of freehold, for the term of her life, by virtue of the devise aforesaid ; and so being thereof seised, the same *Dorothy* afterwards, to wit, on the 27th day of *October* in the year of the Lord 1698, in two roods of land, parcel of the said messuage and yard-land, at *Staverton* aforesaid, for the yearly rent aforesaid for four years,

Declaration on a rescous of a distreis for a rent by prescription.
1 Ven. 2.
4 Mod 231.
Lutw. 213.

Rescous.

at the feast of St. *Michael* the archangel then last past, being to the same *Dorothy* in arrear and unpaid, by the said *Richard Grooby* her servant had caused the cow aforesaid to be taken, and according to the law and custom of this kingdom of *England* had there impounded; and the said *Edward* that pound afterwards, to wit, the same 27th day of *October* in the year of the Lord 1698 aforesaid, at *Staverton* aforesaid, with force and arms, &c. broke, and that cow from thence took and carried away, and other injuries, &c. to the great damage, &c. and against the peace, &c. whereby she says that she is prejudiced, and hath damage to the value of 20 *l.* And therefore she produces the suit, &c.

Scire Facias.

Lloyd and Campbell.

England, **T**HE lady the queen hath sent to her trusty and to wit. beloved *Thomas Trevor*, knt. her chief justice of the bench, her writ close in these words, to wit, *Anne, &c.* To her trusty and beloved *Thomas Trevor*, knt. her chief justice of the bench, greeting: because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before you and your companions, our justices of the bench, by our writ between *Thomas Lloyd* and *Colen Campbell*, late of *London*, merchant, as well for a debt of 120 *l.* which the same *Thomas* demanded of the said *Colen*, as 12 *l.* 10 *s.* which to the said *Thomas* in our said court were adjudged for his damages which he had by reason of the detention of that debt whereof he was convicted, and likewise in the adjudication of execution of a certain judgment on our writ of *scire facias* issuing out of our same court at the suit of the said *Thomas* against *Alexander Hamilton*, late of *London*, merchant, and *J. Campbell*, late of *London*, bookseller, the bail of the said *Colen* in the plea aforesaid of the debt and damages aforesaid, as it is said, a manifest error hath happened to the great damage of them the said *Alexander* and *James*, as by their complaint we have understood: we willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment in the plea aforesaid be given, and adjudication of execution of the judgment on our said writ of *scire facias* be adjudged, then the record and proceedings aforesaid, with all things touching them to us under your seal, you distinctly and openly send, and this writ, so that we may have them on the octave of *St. Martin* wheresoever we shall then be in *England*, that the record and proceedings aforesaid being inspected, we may farther cause to be done therein, to correct that error, what of right and according to the law and custom of our kingdom of *England* shall be to be done. *Witness* ourself at *Westminster* 29th day of *October* in the 5th year of our reign.

Cesar.

The answer of Thomas Trevor, knt. the chief justice within named:

The record and proceedings of the plea, whereof mention is within made, with all things touching them, before the lady the

Error by the bail, as well on the judgment against the principal as on the award of execution against them. Which will not lie. *Hob. 72. Cro. Jac. 384. Lev. 137. 1 Ven. 38. 169.*

Scire Facias.

the queen wheresoever, &c. at the day within contained, I send in a certain record to this writ annexed, as I am within commanded.

Tho. Trevor.

[379]

Pleas inrolled at Westminster before Thomas Trevor, knt. and his companions, justices of the lady the queen of the bench of Hilary term in the 4th year of the reign of the lady Anne, by the grace of God of England, Scotland, France and Ireland, queen, defender of the faith, &c. Roll. 430.

Debt on bond.

Middlesex, COLEN Campbell late of London, merchant, other- to wit. wife called Colen Campbell late of Newfoundland, merchant, now in London, was summoned to answer to Thomas Lloyd, esq; in a plea, that he render to him 120 l. which he owes him and unjustly detains, &c. And whereon the same Thomas by J. B. his attorney says, that whereas the said Colen on the 2d day of July in the 4th year of the reign of the lady the now queen, at Westminster in the county aforesaid, by his certain writing obligatory, acknowledged himself to be bound to the same Thomas in the said 120 l. to be paid to the same Thomas, when he should be thereto required: nevertheless the said Colen, altho' often required, the said 120 l. to the same Thomas hath not yet paid, but hath hitherto refused to pay him them, and yet doth refuse; whereby he says that he is prejudiced, and hath damage to the value of 100 l. And therefore he produces the suit, &c. And he produces here in court the writing aforesaid, which the debt aforesaid in form aforesaid testifies, the date whereof is the day and year abovesaid, &c.

Not his deed.

When, &c. and says, that he ought not to be charged with the debt aforesaid, by virtue of the writing aforesaid, because he says, that that writing is not his deed: and of this he puts himself on the country: and the said Thomas likewise: therefore the sheriff is commanded, that he cause to come here on the octave of the purification of the blessed Mary 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Venire.

Jurata.

The same day is given to the parties aforesaid, &c. On which day the jury between the parties aforesaid in the plea aforesaid was put thereof between them in respite here until this day, to wit, from the day of Easter in 15 days then next ensuing, unless Thomas Trevor, knt. chief justice of the lady the queen of the bench here assigned, by form of the statute, &c. on Wednesday the 13th day of February last past, at Westminster in the great hall there, commonly called Westminster-hall, in the county aforesaid, should first come: and now here at this day comes the said Thomas by his attorney aforesaid; and the said chief justice before, &c. hath sent here his record in these words: afterwards the day and place within contained, before T. Trevor, knt. chief justice of the lady the queen of the bench, A. B. gent.

18 El. c. 12.

12 Geo. c. 31.

Postea.

being

being associate to him, by the form of the statute, &c. comes the within named *Thomas Lloyd* by his attorney within contained; and the within written *Colen Campbell*, altho' solemnly called, doth not come, but hath made default: therefore the jury, whereof mention is within made, is taken against him by default; and the jurors of that jury being called, some of them, to wit, *F. P. R. H. J. M. J. B. T. N. J. A. and T. P.* come, and on that jury are sworn; and because the rest of the jurors of that jury have not appeared, therefore others from the by-standers, by the sheriff of the county of *Middlesex* within written hereto elected, at the request of the said *Thomas Lloyd*, and by the command of the chief justice aforesaid, are added anew, whose names to the panel within written are annexed, according to the form of the statute in such case lately made and provided: and the jurors so added anew, to wit, *R. L. T. M. J. O. B. T. and R. M.* being called likewise come, who to say the truth of the within contained, together with the other jurors aforesaid first impanelled and sworn, being elected, tried and sworn, say on their oath, that the writing within specified is the deed of the said *Colen*, in manner and form as the said *Thomas* hath within against him declared; and they assess the damages of him the said *Thomas*, by reason of the detention of the debt within written, besides his costs and charges by him about his suit in this behalf sustained, to 12 *d.* and for those costs and charges to 20 *s.* Therefore it is considered, that the said *Thomas* do recover against the said *Colen* his debt aforesaid, and his damages aforesaid, to 21 *s.* by the jurors aforesaid in form aforesaid assessed, and also 11 *l.* 9 *s.* to the same *Thomas*, at his request, for his costs and charges aforesaid, by the court here of increase adjudged; which said damages in the whole amount to 12 *l.* 10 *s.* And let the said *Colen*, because he hath denied his deed, be taken, &c.

Tales.

35 H. 8. c. 6.

Verdict.

Judgment.

Capiatur.

Pleas inrolled at Westminster before Thomas Trevor, knt. and his companions, justices of the lady the queen of the bench of Trinity term in the 5th year of the reign of the lady Anne, by the grace of God of England, Scotland, France and Ireland, queen, defender of the faith, &c. Roll. 430.

[380]

Middlesex, **T**HE sheriff of *Middlesex* was commanded, whereas to wit. *Alexander Hamilton*, late of *Dowgate-hill*, *London*, merchant, and *James Campbell*, late of *Fann Court* in *Fannchurch-street*, *London*, bookseller, late in the court of the lady the queen here, to wit, in *Michaelmas* term in the 4th year of the reign of the said lady the now queen, before *Thomas Trevor*, knt. and his companions, justices of the said lady the queen of the bench here, to wit, at *Westminster* acknowledged, and each of them acknowledged, they owed to *Thomas Lloyd* the sum of 240 *l.* which said sum of 240 *l.* the same *Alexander* and *James* for themselves and their heirs agreed and granted, and each of them for

The entry of the judgment on the recognizance against the bail.

The condition.

Judgment
against the
principal.

Breach.

Scire facias.

Nihil return'd.

Second scire
facias.

Nihil return'd.

for himself and his heirs did agree and grant, should be raised and levied out of their and each of their lands and chattels, to the use and behoof of the same *Thomas Lloyd*, on this condition, that if it should happen that judgment should be given for the said *Thomas Lloyd* against *Colen Campbell*, late of *London*, merchant, in a certain plea of debt on a demand of 120 *l.* by the said *Thomas Lloyd*, against the said *Colen* in the same court here prosecuted, then the same *Colen* the said debt of 120 *l.* and also all damages which to the said *Thomas Lloyd*, by reason of the detention of that debt in the same court here should be adjudged, should satisfy, or his body in execution of that judgment to the prison of the *Fleet* should render: and altho' the said *Thomas Lloyd* in *Easter* term in the 5th year of the reign of the said lady the now queen, before the said *Thomas Trevor*, knight, and his companions, justices of the said lady the queen of the bench here, to wit, at *Westminster* aforesaid, by the consideration of the same court had recovered against the said *Colen* as well the said 120 *l.* as 12 *l.* 10 *s.* which to the same *Thomas Lloyd* in the same court of the said lady the queen were adjudged for his damages which he had by reason of the detention of that debt whereof he is convicted, as by the record and proceedings thereof in the same court of the said lady the queen remaining manifestly appears: nevertheless the said *Colen* the debt and damages aforesaid to the said *Thomas Lloyd* hath not satisfied, nor his body in execution of such judgment to the said prison of the *Fleet* hath not render'd, as by the suggestion of the said *Thomas Lloyd* the queen had understood; and because, &c. that by good, &c. he should give notice to the said *Alexander* and *James*, that they should be before the said justices of the said lady the queen at *Westminster* on the morrow of the holy *Trinity*, to shew if, &c. to wit, to the said *Alexander*, why the said 240 *l.* by him in form aforesaid acknowledged, out of his lands and chattels ought not to be raised, and to the said *James*, why the said 240 *l.* by him in form aforesaid acknowledged, out of his lands and chattels ought not to be raised, and to the use and behoof of the same *Thomas Lloyd* levied, according to the form of the recognizance aforesaid, if, &c. And now here at this day, to wit, the said morrow of the holy *Trinity* comes the said *Thomas Lloyd* by *J. D.* his attorney, and hath offer'd himself on the 4th day against the said *Alexander* and *James* in the plea aforesaid; and they being solemnly called have not come: and the sheriff, to wit, *C. T. knt.* and *S. S. knt.* now returns, that they have nothing, nor hath either of them any thing, &c. neither are they found, nor is either of them found, &c. Therefore as before the sheriff is commanded, that by good, &c. he give notice to the said *Alexander* and *James*, that they be here from the day of the holy *Trinity* in three weeks, to shew in form aforesaid, &c. On which day here comes as well the said *Thomas Lloyd* by his attorney aforesaid, as the said *Alexander* and *James* by *E. H.* their attorney; and the sheriff, to wit, the said *C. T. knt.* and *S. S. knt.*

Seire Facias.

† 380

as before, now return, that they have nothing, nor hath either of them any thing, neither are they found, nor is either of them found, &c. And upon this the said *Thomas Lloyd* prays execution against the said *Alexander* for the said 240 *l.* oy him in form aforesaid acknowledged, and against the said *James* for the said 240 *l.* by him in form aforesaid acknowledged, according to the form of the recognizance aforesaid, to be adjudged to him, &c.

And the said *Alexander* and *James* by their attorney aforesaid come and defend the force and injury when, &c. and say nothing in bar or preclusion of the execution aforesaid, whereby the same *Thomas* remains against the said *Alexander* and *James* therein undefended: therefore it is considered, that the said *Thomas* have execution against the said *Alexander* and *James* of the said several sums of 240 *l.* of their and each of their lands and chattels respectively to be levied, according to the form and effect of the recognizance aforesaid.

Judgment by
nihil dicit.

Grice and Leigh.

[381]

Mich. 12 W. 3. Roll. 77, 78.

WILLIAM, &c. To the sheriff of *Surry*, greeting:

Whereas *Denham Hunlocke*, merchant taylor, lately in the court of the lord *Charles* the Second, late king of *England*, &c. before the said late king himself at *Westminster* by bill, without the writ of the same late king, and by the judgment of the same court, hath recovered against *Thomas Leigh*, bart. son and heir of *Wolley Leigh*, esq; then lately deceased, then otherwise lately called *Wolley Leigh* of *Thorpe* in the county of *Surry*, esq; 300 *l.* debt, and also 50 *s.* as well for his damages which he had sustained by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, of 4 messuages and 17 acres and 2 roods of land with the appurtenances in *Thorpe* and *Puttenham* in your county, and one messuage with the appurtenances in *East Wickham* in the county of *Kent*, to be levied, and of the reversion of the manor of *Hallplace* with the appurtenances, and 5 messuages, 6 cottages, 2 dove-houses, 3 gardens, 3 orchards, 650 acres of land, 200 acres of meadow, 500 acres of pasture, 100 acres of wood, 300 acres of heath and furze, 200 acres of moor, and 50 *s.* rent, with the appurtenances in *Thorpe*, *Chertsey* and *Egham*, in your county aforesaid, and the rectory of *Thorpe* with the appurtenances, and the moiety of the manor of *Sboland* with the appurtenances, and one messuage, one dove-house, 100 acres of land, 40 acres of meadow, 100 acres of pasture, 20 acres of wood, and 50 acres of heath and furze in *Puttenham*, *Elsted Seal* and *Tongham* in your county aforesaid, when it shall happen; which said manor, rectory, tenements and moiety with the appurtenances, *John Lowther*, bart. and *Elizabeth* his wife, who was the wife of the said *Wolley*, then held for the term of the life of the

Seire facias
against an heir
on a recovery
against him to
be levied when
the reversion
happened.

The premises
held for life.

The premisses
held for 99
years.

Death of the
plaintiff in the
judgment.

Death of the
executrix, who
had made plain-
tiff her execu-
trix.

the said *Elizabeth*, in the right of the said *Elizabeth*, and the reversion of the manor of *Staines* with the appurtenances, and one cottage, one parcel of land, containing 28 feet in breadth and 83 feet in length, and another parcel of land, containing in length 24 feet with the appurtenances in *Staines* in the county of *Middlesex*, and one messuage and 16 acres of meadow with the appurtenances in *Addington* in your county aforesaid, and the yearly rent of 11*l.* issuing out of one mill, one messuage, and two acres of meadow in *Staines* aforesaid in the said county of *Middlesex*, and of the fair and market in *Staines* aforesaid to be held, and of the sum or pension of 2*s.* issuing out of the vicarage of *Staines* aforesaid, after the expiration of the term of 99 years, commencing from 17th day of *May* in the year of the Lord 1636, thereof granted to one *William Drake*, esq; by the said *Wolley* in his life-time, under the yearly rent of a pepper-corn, by a certain indenture made at *Staines* aforesaid on the same 17th day of *May* in the year of the Lord 1636 aforesaid, between the said *Wolley* of the one part, and the said *William Drake* of the other part, bearing date the same day and year, by him the said *Denham* demanded, to be levied when it should happen: and whereas as well the said *Denham* as the said *Thomas Leigh* are dead, and the said *Elizabeth*, the wife of the said *John Lowther*, bart. hath survived them, and the said *Denham* at *Thorpe* aforesaid in your county hath made his last will and testament in writing, and by the same will constituted *Francis Hunlocke* and *Isabel Walmsley* executors thereof, and afterwards there died (the debt and damages aforesaid, or any part thereof, being not satisfied) and afterwards the said *Francis Hunlocke* there died; after whose death the said *Isabel* took upon herself the burden of the execution of the will of the said *Denham*, and that will in due form of law proved; and afterwards the same *Isabel* there made her last will and testament in writing, and by the same constituted *Sarah Grice*, widow, executrix thereof, and afterwards there died (the debt and damages aforesaid, or any part thereof, being not satisfied); and now on the behalf of the said *Sarah Grice*, we have in our court before us understood, that altho' judgment in form aforesaid be given, yet execution for the debt and damages aforesaid still remains to be executed; wherefore the same *Sarah* hath beseeched us to grant her a proper remedy in this behalf, and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the heir and tenants of the manor of *Hall-place* with the appurtenances, and of the said moiety of the manor of *Sholand* with the appurtenances, and of the said rectory of *Thorpe* aforesaid with the appurtenances, and of the said messuages, lands and tenements, and other the premisses in *Thorpe*, *Chertsey*, *Egham*, *Puttenham*, *Elsted Seale* and *Tongham* aforesaid, with the appurtenances in your county aforesaid, that they be before us at *Westminster* on day next after to shew if they have or can say any thing for themselves, why the

the said manor of *Hall-place* with the appurtenances, and the said moiety of the manor of *Sholand* with the appurtenances, and the said rectory of *Thorpe* with the appurtenances, and the said messuages, lands and tenements, and other the premisses in *Thorpe, Chertsey, Egham, Puttenham, Elsted Seal and Tongham* afore said with the appurtenances, ought not to be delivered to the said *Sarah Grice*, to hold to the same *Sarah* and her assignis as her freehold until she shall have thereout fully levied the debt and damages afore said, according to the form and effect of the recovery afore said, if they shall think fit, and farther to do and receive what our same court before us shall then and there consider concerning them in this behalf, and have there then the names of those by whom you shall give them notice, and this writ. Witness, &c.

To shew why the premisses should not be delivered to the plaintiff to hold as her freehold until, &c.

On which day before the lord the king at *Westminster* comes the said *S. G.* widow, by *John Lilly* her attorney; and the sheriff of the county of *S.* to wit, *L. W.* esq; by virtue of the writ afore said to him directed returns, that by virtue of the writ afore said to him directed, by *G. Horne* and *John Doe*, good and lawful men of his bailiwick, he hath given notice to *H. Bartholomew*, tenant of 2 malt-houses with the appurtenances, 200 acres of land, 50 acres of meadow, and 50 acres of pasture with the appurtenances, situate, lying and being in the parish of *Egham* and *Thorpe* in his county, and also of the rectory of *Thorpe* with the appurtenances in the parish of *Thorpe* in his county, parcel of the lands and tenements in the writ to this schedule annexed mentioned; and also to *Maurice Bailey*, tenant of one messuage with the appurtenances, 100 acres of land, 50 acres of meadow, and 50 acres of pasture with the appurtenances in *Thorpe* afore said, being other parcel of the lands and tenements in the said writ to this schedule likewise annexed mentioned, and also to *H. Ward* the younger, tenant of one close of land called *Bl-ridge*, containing 14 acres of land, and also of 2 acres of meadow, and of 2 closes of land called *Grenneys*, containing 26 acres of land lying and being in *Chertsey* and *Thorpe* in his county afore said, being other parcel of the lands and tenements in the said writ to this schedule likewise annexed mentioned, that they should be before the lord the king at the day and place in the writ to this schedule annexed mentioned, to shew as in the writ afore said is contained, and farther to do and receive as the writ afore said commands and requires: and he farther certifies, that there are no other heirs, neither is there any other heir, nor are there any other tenants, neither is there any other tenant of the said lands and tenements in the writ afore said mentioned in his bailiwick, to whom he can give notice, as he is within commanded; and hereupon the same *Sarah* produces here in court as well the letters testamentary of the said *Denham Hunlocke*, as the letters testamentary of the said *Isabel*, whereby it sufficiently appears to the court here, that she the said *Sarah* is executrix of the said will of the said *Isabel*, and thereof hath the admi-

The return.

The wills produced.

Execution
prayed.

Defendants ap-
pear.

Abatement by
one tenant for
want of form.

Demurrer.

[383]

Joinder.

administration, &c. and that she the said *Isabel* was one of the executors of the will of the said *Denham*, and thereof had the administration, &c. And the same *Sarah* prays execution against the said *Maurice Bailey*, &c. for the debt and damages aforesaid of the lands and tenements aforesaid with the appurtenances, whereof they are as aforesaid returned tenants, according to the recovery aforesaid to be levied, to be adjudged to her, &c. And they on the same day being solemnly called by J. S. their attorney come, and the said *Maurice Bailey* says, that the said *Sarah* ought not to have her execution against him for the debt and damages aforesaid of the lands and tenements in the return of the said writ of *scire facias* mentioned, whereof he is returned tenant; and the said *Maurice* prays judgment of the said writ of *scire facias*, because he says, that that writ is in itself vitious, and not issued in the form in such case by the law of this realm required, for this, to wit, that the sheriff of the county of *Surrey* aforesaid is by that writ commanded, that he should give notice to the tenants of the lands and tenements in that writ specified, that they be in court here on the day in the same writ contained, to shew what they have or can say for themselves, why the lands and tenements in the same writ specified ought not to be delivered to *Sarah Grice* in the same writ mentioned, to hold to the same *Sarah Grice* and her assigns as her freehold, until she shall have thereout fully levied the debt and damages in the same writ specified, when by law the said words, *as her freehold*, ought to be omitted, and not inserted: and this he is ready to verify: wherefore he prays judgment of the writ aforesaid, and that that writ may be quashed.

And the said *Sarah* says, that by any thing by the said *Maurice Bailey* above in pleading pleaded, her writ of *scire facias* aforesaid ought not to be quashed, because she says, that that plea, and the matter in the same contained, are not sufficient in law to quash that writ, or to delay her the said *Sarah Grice* from having her execution aforesaid against him the said *Maurice Bailey* for the debt and damages aforesaid of the lands and tenements aforesaid with the appurtenances, whereof he is as aforesaid returned tenant; and that she to that plea in manner and form aforesaid pleaded hath no necessity, nor is by the law of the land obliged in any manner to answer: and this she is ready to verify: wherefore for want of a sufficient plea in this behalf the same *Sarah* prays judgment, and that her writ aforesaid may be adjudged good, &c.

And the said *Maurice Bailey*, for that he hath above alleged sufficient matter in law to preclude the said *Sarah* from having her execution aforesaid against him the said *Maurice* for the debt and damages aforesaid of the lands and tenements aforesaid with the appurtenances, whereof he is as aforesaid returned tenant, which he is ready to verify; which said matter the said *Sarah* doth not deny, nor thereto in any wise answer, but doth altogether refuse to admit that averment, as before prays judgment, and that

that she the said *Sarah Grice* may be precluded from having her execution aforesaid against him for the debt and damages aforesaid of those lands and tenements: and because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until *Thursday* next after the octave of *St. Hillary* to hear their judgment thereon, because the court of the said lord the king now here thereof not yet, &c.

And the said *Henry* prays judgment of the said writ of *scire facias*, because he says, that the said *Thomas Leigh* in the said writ mentioned, at the time of his death had issue of his body *John Leigh*, knt. his first begotten son and heir; and the same *John Leigh*, knt. the son and heir of the said *Thomas Leigh*, had issue of his body *John Leigh*, esq; his first begotten son and heir, and afterwards before the issuing of the said writ of *scire facias* died; which said *John Leigh*, the son of the said *John Leigh*, knt. and grandson and heir of the said *Thomas Leigh*, in the writ aforesaid named, is now surviving and in full life, to wit, at *Thorpe* aforesaid in the county of *Surrey* aforesaid, and at the time of the issuing of the writ of *scire facias* aforesaid was seised and yet is seised in his demesne as of fee of divers parcels of the tenements in the writ aforesaid specified: and this he is ready to verify: wherefore for that the said *John Leigh*, esq; the grandson and heir of the said *Thomas Leigh*, is not named in the writ aforesaid, nor the sheriff aforesaid commanded by the writ aforesaid to summon the heir of the said *Thomas Leigh*, the same *Henry* prays judgment of that writ so against him issued, and that that writ may be quashed, &c.

The other pleads, that the heir is not named in the writ.

And the said *Sarah* (*demurrer and joinder in demurrer as before to Bailey's plea.*)

And the said *John Leigh*, grandson and heir of the said *Thomas Leigh*, in the writ aforesaid mentioned, to wit, son and heir of *John Leigh*, knt. deceased, son and heir of the said *Thomas Leigh*, knt. deceased, by C. S. his guardian comes and says, that the said *John Leigh*, knt. father of him the said *John Leigh*, whose heir as aforesaid, he is, after the judgment aforesaid in the writ aforesaid specified was given, was seised of the premisses aforesaid in the writ and return aforesaid specified, with the appurtenances, in his demesne as of fee, and of such estate therein at *Thorpe* aforesaid died seised; after whose death the tenements aforesaid with the appurtenances descended to the same *John*, as son and heir of the said *John Leigh*, knt. and the same *John* by reason of that descent into those tenements with the appurtenances hath entered, and is thereof seised in his demesne as of fee; and he says that he is under the age of 21 years, to wit, of the age of 18 years and 3 months, and no more: and this he is ready to verify: wherefore he doth not suppose that the said *Sarah* ought to be answered during his minority, and prays that the plea may remain until the full age of the same *John*.

The heir pleads infancy.

And

Demurrer.

And the said *Sarah* says, that by any thing by him the said *John* above pleaded her plea aforesaid ought not to remain over, because she says, that the plea aforesaid by him the said *John Leigh* above in delay of her plea aforesaid pleaded, and the matter in the same contained, are not sufficient in law to preclude her the said *Sarah* from having her execution aforesaid for the debt and damages aforesaid of the lands and tenements aforesaid, so as aforesaid returned, until, &c. And this the same *Sarah* is ready to verify: wherefore she prays judgment, and that she the said *Sarah* in the plea aforesaid may proceed notwithstanding the said *John* is under the age of 21 years.

Joinder.

And the said *John Leigh* by his guardian aforesaid says, that his plea aforesaid above in delay of the plea aforesaid pleaded, and the matter in the same contained, are good and sufficient in law to preclude her the said *Sarah* from having her execution aforesaid against him the said *John* until, &c. And this he is ready to verify: wherefore for that the same *Sarah* doth not answer to that plea, nor in any wise deny it, the same *John* prays judgment, and that the plea aforesaid may remain until the full age of him the said *John*, &c.

Disclaimer.

And the said *Henry Bartholomew* by the said C. S. his attorney comes and says, that he at the time of the issuing of the *scire facias* aforesaid was and yet is occupier of the premisses whereof he is as aforesaid returned tenant, at the will of one *John Leigh* and him the said *Henry*; and that he hath not, nor claims to have, any thing in the demesne, or in the reversion of the demesne of the tenements aforesaid, or of any part thereof whereof he is as aforesaid returned tenant, as of freehold or of fee, nor had, nor claimed to have, any thing on the day of the issuing of the said writ of *scire facias*, or ever after, but to have any thing in demesne, or in the reversion of the demesne of the same tenements with the appurtenances, or any part thereof, as of freehold, or of fee, absolutely disavows and disclaims: therefore at the petition of the said S. *Grice* it is considered, that the lands and tenements, whereof the said *H. Bartholomew* is as aforesaid returned tenant, be delivered to the said *Sarah Grice*, to hold to the same *Sarah Grice* until the debt and damages aforesaid be thereout fully levied, according to the form and effect of the recovery aforesaid; but let the execution of those several judgments stay until the plea aforesaid between the said *Maurice Bailey* and the said *Sarah Grice*, and the plea aforesaid between the said *Henry Ward* and the same *Sarah*, be determined, &c. But because it is unknown what the lands and tenements aforesaid, so as aforesaid returned, to be in the several tenures of the said *Henry Bartholomew*, *Maurice Bailey*, &c. in the said return to the writ of *scire facias* aforesaid named, are worth by the year, according to the true value of the same, in all issues, besides reprises, the said sheriff of the county of *Surrey* is commanded, that by the oath of 12 good and lawful men of his county he diligently inquire what those several lands and tenements are worth by the year, according

Inquiry awarded. This cause was agreed, and judgment by consent for the plaintiff.

ing to the true value of the same, in all issues, besides reprises; and that inquisition so by him diligently made, the same lands and tenements with the appurtenances, according to the true value of the same, to the same *Sarah Grice* without delay deliver, to hold to the same *Sarah Grice* as her freehold until she shall thereout levy the debt and damages aforesaid, and how, &c. he certify to the lord the king at *Westminster* on day, &c. under the seal, &c. and the seals, &c. together with the writ of the lord the king to him therefore directed: the same day is given to the said *Sarah* there, &c.

Suell against the tertenants of the Earl of Anglesey.

England, **T**HE lady the queen hath sent to the sheriffs of *London* her writ close in these words, to wit, *Anne*, &c. To the sheriffs of *London*, greeting: whereas *Robert Vyner*, knt. lately in the court of the lord *Charles* the Second, late king of *England*, &c. before the king himself, at *Westminster* by bill, without the writ of the said late king, and by the judgment of the said court, recovered against the most noble *Arthur* earl of *Anglesey* 8000 *l.* debt, and also 21 *s.* for his damages which he had sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted (as it appears to us on record: and as well *Robert Vyner* as the said *Arthur* earl of *Anglesey* are since dead; and the said *Robert Vyner* in his life-time, to wit, on the 29th day of *August* in the year of the Lord 1688, at *London* aforesaid in the parish of *St. Mary le Bow* in the ward of *Cheape*, made his last will and testament in writing, and by the same will constituted *Francis Millington*, esq; and *Thomas Vyner*, esq; executors of that last will and testament; and afterwards, to wit, the same day, year and place died; after whose death, to wit, on the 4th day of *October* in the year of the Lord 1688 abovesaid, the said *Thomas Vyner* at *London* aforesaid in the parish and ward aforesaid, took upon himself the burden of the execution of that will, and then and there that will in due form of law proved, and the said *Francis Millington* then and there the burden of the execution of that will in due form of law expressly renounced; and afterwards, to wit, the same day, year and place died, and the said *Thomas Vyner* survived him: and afterwards, to wit, on the 4th day of *February* in the year of the Lord 1706, the said *Thomas Vyner*, at *London* aforesaid in the parish and ward aforesaid, made his last will and testament in writing, and by the same will constituted *Robert Suell*, esq; executor of that will; and afterwards, to wit, the same day, year and place died; after the death of which said *Thomas Vyner* the said *Robert Suell* took upon himself the burden of the execution of the same will, and that will in due form of law hath proved, and the execution of that judgment yet remains to be executed, as by the suggestion of the said *Robert Suell* in our court before us we have understood: wherefore

Scire facias by an executor against the heir and tertenants.

The plaintiff having made his will, and constituted 2 executors, died.

One proved the will, and the other renounced, and died.

The acting executor made his will, and the plaintiff executor, and then died.

fore the said *Robert Suell* hath beseeched us to grant him his proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the heir of the said *Arthur* earl of *Anglesey*, and also to the tenants of all the lands and tenements in your bailiwick which were the said *Arthur* earl of *Anglesey's*, on *Tuesday* next after the octave of *St. Martin* in the 17th year of the reign of the said lord *Charles* the Second the late king, on which day the judgment aforesaid was given, or ever after, that they be before us at *Westminster* on day next after to shew if they have or can say any thing for themselves, why the debt and damages aforesaid ought not to be levied on those lands and tenements, and paid to the said *R. Suell*, according to the force, form and effect of the recovery aforesaid, if they shall think fit, and farther to do and receive what our said court before us shall then and there consider concerning them in this behalf; and have there then the names of those by whom you give them notice, and this writ. Witness *T. Parker* at *Westminster* the day of in the 17th year of our reign.

Holt. Ventris.

The return.

No heir nor tenant.

Testatum awarded to the sheriffs of

Oxford.

On which day before the lady the queen at *Westminster* comes *Robert Suell* by *John Allen* his attorney; and the sheriffs of *London*, to wit, *W. S.* and *J. C.* esq; on that day return, that there were not, nor was, any heirs or heir of the said *Arthur* earl of *Anglesey*, and there were not, nor was, any tenants or tenant of any lands or tenements which were the said *Arthur* earl of *Anglesey's* on the day that the judgment aforesaid was given, or ever after in their bailiwick, to whom they could give notice, according to the command of the writ aforesaid; whereupon on the behalf of the said *Robert* in the same court of the said lady the queen before the queen herself it is sufficiently testified, that there are divers lands and tenements in the several counties of *Oxford*, *South'ton* and *Middlesex*, which were the said *Arthur* earl of *Anglesey's* on the said *Tuesday* next after the octave of *St. Martin* in the 17th year of the reign of the said lord *Charles* the Second, the late king aforesaid, and long after, on which the debt and damages aforesaid might be made and levied: therefore the sheriff of the county of *Oxford* is commanded, that by good and lawful men of his bailiwick he give notice to the heirs of the said *Arthur* earl of *Anglesey*, and also to the tenants of all the lands and tenements in his bailiwick which were the said *Arthur* earl of *Anglesey's* at the said time of the judgment aforesaid given, or ever after, that they be before the lady the queen at *Westminster* on *Thursday* next after three weeks of *St. Michael*, to shew if they have or can say any thing for themselves, why the debt and damages aforesaid ought not to be levied on those lands and tenements, and paid to the said *Robert Suell*, if, &c. and farther, &c. and that the same sheriff of *Oxford* have there then

then that writ : the sheriff of the county of *South'ton* is likewise *South'ton.*
 commanded, that by good and lawful men of his bailiwick he
 give notice to the heirs of the said *Arthur* earl of *Anglesey*, and
 also to the tenants of all the lands and tenements in his bailiwick
 that were the said *Arthur* earl of *Anglesey's* at the said time of the
 judgment aforesaid given, or ever after, that they be before the
 lady the queen at *Westminster* on day next after to
 shew if they have or can say any thing for themselves, why the
 debt and damages aforesaid ought not to be levied on those lands
 and tenements, and paid to the said *Robert Suell*, if, &c. and
 farther, &c. and that the same sheriff of *South'ton* have there
 then that writ : the sheriff of the county of *Middlesex* is likewise *Middlesex.*
 commanded, that by good and lawful men of his bailiwick he
 give notice to the heirs of the said *Arthur* earl of *Anglesey*, and
 also to the tenants of all the lands and tenements in his bailiwick
 which were the said *Arthur* earl of *Anglesey's* at the said time of the
 judgment aforesaid given, or ever after, that they be before the la-
 dy the queen at *Westminster* on day next after to shew
 if they have or can say any thing for themselves, why the debt
 and damages aforesaid ought not to be levied on those lands and
 tenements, and paid to the said *Robert Suell*, if, &c. and far-
 ther, &c. and that the same sheriff of *Middlesex* have there then
 that writ : the same day is given to the said *Robert Suell* there, &c.
 On which day before the lady the queen at *Westminster* comes
 the said *Robert Suell* in his proper person ; and the sheriff of the
 county of *Oxford*, to wit, *Charles Holt*, esq; returns, that he
 by virtue of the writ aforesaid to him directed by *George Vaug-*
han and *John Ives*, good and lawful men of his bailiwick, had
 given notice to *John Lewen*, gent. tenant of one capital mes-
 suage with the appurtenances, and one close of pasture in
Bletchington, called *Brooks Green*, otherwise *Brocks Green*, con-
 taining by estimation 3 acres, and one close of pasture in
Bletchington aforesaid, called the *Park*, containing by estimation
 70 acres, and also to *Ralph Dutton*, bart. tenant of two closes
 in *Bletchington* aforesaid, called *Upper Hall's Close*, containing
 by estimation 50 acres, and likewise to *Richard Young* and *Wil-*
liam Young, tenants of one close of pasture in *Bletchington* afore-
 said, called the *New-ground*, containing by estimation 90 acres,
 and also to *William Sarney*, tenant of three closes of pasture in
Bletchington aforesaid, called the *Westfield Cow-pasture* and the
Sands, containing by estimation 120 acres, and likewise to *John*
Faulkner, tenant of four closes of pasture in *Bletchington*, afore-
 said, called *Upper Bean Hill*, containing by estimation 70 acres,
 which were the lands and tenements of the said *Arthur* earl of
Anglesey, on the day of the rendition of the judgment aforesaid,
 that they be before the lady the queen at the day and place afore-
 said, to shew in form aforesaid, if, &c. as by the writ afore-
 said he is commanded and required ; and that there were not,
 nor was, any heirs or heir, nor any tenants or tenant of any
 other lands and tenements which were the said *Arthur* earl of
Anglesey's

The sheriff of
Oxford returns a
 scire feci.

[386]

The sheriff of
South'ron returns
a scire feci.

The sheriff of
Middlesex re-
turns a scire feci.

The wills pro-
duced.

Execution pray-
ed.

Outlawry of the
testator.

Anglesey's on the day of the rendition of the judgment aforesaid, or ever after in his bailiwick, to whom he could give notice, as by the writ aforesaid he was commanded; and the sheriff of *South'ron* to wit, *A. B.* esq; at that day to wit, the said day next after returns, that he by virtue of the writ aforesaid, to him directed by *C. D.* and *E. F.* good and lawful men of his bailiwick, had given notice to *R. Smith*, tenant of 10 acres of land, &c. which were the lands and tenements of the said *Arthur* earl of *Anglesey*, on the day of the rendition of the judgment aforesaid, that he be before the lady the queen at the day and place aforesaid, to shew in form aforesaid, if, &c. as the writ aforesaid commanded and required; and that there were not, nor was, any heirs or heir, nor any tenants or tenant of any other lands or tenements which were the said *Arthur* earl of *Anglesey's* on the day of the rendition of the judgment aforesaid, or ever after in his bailiwick, to whom he could give notice, as by that writ he was commanded; and the sheriff of *Middlesex*, to wit, *W. S.* esq; and *J. C.* knt. at that day, to wit, the said day next after returns, that he by virtue of the writ aforesaid, to him directed by *J. K.* and *L. M.* good and lawful men of his bailiwick, had given notice to *J. B.* tenant of 17 acres of land, &c. which were the lands and tenements of the said *Arthur* earl of *Anglesey* on the day of the rendition of the judgment aforesaid, that he be before the lady the queen at the day and place aforesaid, to shew in form aforesaid, if, &c. as the writ aforesaid commanded and required: and that there were not, nor was, any heirs or heir, nor any tenants or tenant, of any other lands or tenements which were the said *Arthur* earl of *Anglesey's* on the day of the rendition of the judgment aforesaid, or ever after in his bailiwick, to whom he could give notice, as by that writ he was commanded: and upon this the said *Robert Suell* produces here in court as well the letters testamentary of the said *Robert Vyner*, knt. as the letters testamentary of the said *Thomas Vyner*, esq; whereby it sufficiently appears to the court here, that he the said *Robert Suell* is executor of the will of the said *Thomas Vyner*, esq; and thereof hath the administration, &c. and that he the said *Thomas Vyner*, esq; was one of the executors of the will of the said *Robert Vyner*, knt. and thereof had the administration, &c. And the same *Robert Suell* prays execution against the said *John Lewen*, *Ralph Dutton*, *Richard Young*, *William Young*, *William Sarney*, and *John Falkner*, for the debt and damages aforesaid, on the lands and tenements aforesaid with the appurtenances whereof they are as aforesaid returned tenants, according to the recovery aforesaid to be levied, to be adjudged to him, &c. And they on the same day being solemnly called by *J. S.* their attorney come and say, that the said *Robert Suell* ought not to have execution against them for the debt and damages aforesaid of the lands and tenements aforesaid, because they say, that one *William Edwards*, esq; otherwise, to wit, in *Trinity* term in the 35th year of the reign

of the lord *Charles* the Second, late king of *England*, impleaded the said *Robert Vyner* in the court of the said late king of the bench at *Westminster* in a plea of debt; and because the said *Robert Vyner* did not come into the said court of the said lord the king of the bench aforesaid, to answer to the said *William Edwards* therein, according to the law and custom of this kingdom, was put in exigent to be outlawed in the *Hustings* of *London*, and that on that occasion it was in such manner proceeded, that afterwards to wit, on *Monday* next before the feast of the conversion of *St. Paul* in the 35th year of the reign of the said late lord the king aforesaid, at the suit of the said *William Edwards* in the plea aforesaid, in *London* aforesaid, he was outlawed, as by the record and proceedings thereof now in the court of the said lady the queen of the bench aforesaid remaining is more fully manifest and appears; which said outlawry yet remains in its full force and effect not reversed or annulled: and this they are ready to verify when and as the court here shall consider: wherefore the same *John Lewen*, *Ralph Dutton*, *Richard Young*, *William Young*, *William Sarney* and *John Falkner*, pray judgment, if the said *Robert Suell* ought to have execution on the judgment aforesaid against them for the debt and damages aforesaid of the lands and tenements aforesaid; with this, that the said *John Lewen*, *Ralph Dutton*, *Richard Young*, *William Young*, *William Sarney* and *John Falkner*, will verify, that the said *Robert Vyner* so as aforesaid outlawed, and the said *Robert Vyner* in the said writ of *scire facias* above named, is one and the same person, and not another not divers.

Tho. Lutwyche,
William Salkeld.

Atkinson against Wilcox.

[387]

GEORGE, &c. To the sheriff of *Middlesex*, greeting: whereas *James Atkinson*, gent. lately in our court before us at *Westminster* by bill, without our writ, and by the judgment of the same court hath recovered against *John Cooke*, esq; otherwise called *John Cooke* of *Great Chisbull* in the county of *Essex*, esq; and *Thomas Haines* esq; otherwise called *Thomas Haines* of *London*, esq; 800*l.* debt, and also 50*s.* for his damages which he hath sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *John* and *Thomas* are convicted, as it appears to us on record; and altho' judgment thereof is given, yet execution for the debt and damages aforesaid yet remains to be executed: and whereas *George Wilcox* of the *Poultry*, *London*, gent. otherwise, to wit, in *Michaelmas* term in the third year of our reign before us at *Westminster* came and became surety and bail for the said *John*, that if it should happen that the said *John* should be convicted at the suit

Scire facias against one of the bail in debt in K. B.

Scire Facias.

of the said *James* in the plea aforesaid, then the same bail granted, that as well the debt aforesaid, as all such damages, costs and charges, which to the said *James* in that behalf should be adjudged, of his lands and chattels should be made, and to the use of the said *James* levied, if it should happen that the said *John* should not pay the debt and those damages, costs and charges to the said *James*, or should not render himself on that account to our prison to the marshal of the *Marshalsea* before us; which said debt, and the damages, costs and charges, to the said *James* are not yet paid, nor hath the said *John* render'd himself to our prison to the marshal of the *Marshalsea* aforesaid before us, as we have by the suggestion of the said *James* in our court before us understood: wherefore the said *James* hath besought us to grant him his proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *George*, that he be before us at *Westminster* on *Wednesday* next after three weeks of *St. Michael*, to shew if he hath or can say any thing why the said *James* ought not to have his execution against him for the debt and the damages, costs and charges aforesaid, according to the force, form and effect of the recognisance aforesaid, if he shall think fit, and farther to do and receive all and singular those things which our same court before us shall then and there consider concerning him in that behalf; and have there the names of those by whom you shall give him notice, and this writ. Witness *T. lord Parker*, baron of *Macclesfield*, at *Westminster*, &c.

Barrow against the tertendants of Hopkins.

Trin. 1 Will. Rot. 136.

Scire facias.

The recovery.

Death of the defendant.

WILLIAM &c. To the sheriffs of the city of *Coventry*, greeting: whereas *G. Barrow* lately in the court of the lord *Charles* the Second, late king of *England*, before the late king himself at *Westminster*, by bill, without the writ of the same late king, and by the judgment of the same court, hath recovered against *William Hopkins*, gent. otherwise called *William Hopkins* of *Wednesbury* in the county of *Stafford*, gent. 160*l.* debt, and also 50*s.* for his damages which he hath sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *William* is convicted, as it appears to us on record; and the said *William Hopkins* after the judgment aforesaid in form aforesaid recovered is dead, and the execution of the judgment aforesaid yet remains to be executed, as by the suggestion of the said *George* we have in our court before us understood: wherefore the same *George* hath besought us to grant him his proper remedy in this behalf; and we being willing that what

what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the tenants of all the lands and tenements in your bailiwick, of which the said *William* on *Saturday* next after three weeks of *St. Michael* in *Michaelmas* term in the 21st year of the reign of the said late king *Charles* the Second, on which day the judgment aforesaid was given, or ever after, was seised, that they be before us at *Westminster* on *Monday* next after the octave of *St. Martin*, to shew if they have or can say any thing for themselves, why the debt and damages aforesaid of those lands and tenements ought not to be made, and to the said *G. Barrow* paid, according to the force, form and effect of the recovery aforesaid, if they shall think fit, and farther to do and receive what our court before us shall then and there consider concerning him in this behalf; and have there then the names of those by whom you shall give them notice, and this writ. Witness *J. Holt*, &c.

[388]

There are no tenants, neither is there any tenant of any lands or tenements in our bailiwick of which the within named *W. Hopkins* was seised on *Saturday* next after three weeks of *St. Michael* in *Michaelmas* term in the 21st year of the reign of the lord *Charles* the Second above written, or ever after, to whom we can give notice.

The return.

The answer of { *J. Olds*
and
Luke Barnes } sheriffs.

Barrow and *Hopkins*.

WILLIAM, &c. To the sheriff of *Stafford*, greeting: *Tessatum scire facias against the*
whereas *George Barrow* lately in the court of the lord *Charles* the Second, late king of *England*, before the late king himself, at *Westminster*, by bill, without the writ of the same late king, and by the judgment of the same court, hath recovered against *W. Hopkins*, gent. otherwise called, &c. 160*l.* debt, and also 50*s.* for his damages which he hath sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as it appears to us on record; and the said *W. Hopkins* after the judgment aforesaid given is dead, and died seised of several lands and tenements in his demesne as of fee, and execution of the judgment aforesaid yet remains to be executed, as by the suggestion of the said *George Barrow* we have in our court before us understood: wherefore the same *George Barrow* hath besought us to grant him his proper remedy in this behalf; and because we will have those things which are lawfully transacted in our court duly executed, we have lately commanded our sheriffs of our city of *Coventry*, that they should by good and lawful men of their bailiwick give notice to the tenants of all the lands and tenements

Death of the defendant.

Recital of the scire facias to Coventry.

and the return.

Testatum.

in their bailiwick, of which the said *William* on *Saturday* next after three weeks of *St. Michael* in *Michaelmas* term in the 21st year of the reign of the said late lord king *Charles* the Second, on which day the judgment aforesaid was given, or ever after, was seised, that they should be before us at *Westminster* on *Monday* next after the octave of *St. Martin* last past, to shew if they had or could say any thing for themselves, why the debt and damages aforesaid on those lands and tenements ought not to be levied and paid to the said *George*, according to the force, form and effect of the recovery aforesaid, if they should think fit, and farther to do and receive what our same court before us should then and there consider concerning them in that behalf; and our said sheriffs of our city of *Coventry* did on that day return to us, that there are not, nor is, any tenants or tenant of any lands or tenements in their bailiwick of which the said *William* was seised on *Saturday* next after three weeks of *St. Michael* in *Michaelmas* term in the 21st year of the reign of the lord *Charles* the Second, late king of *England*, &c. or ever after, to whom they could give notice: and now on the behalf of the said *George Barrow* in our court before us it is sufficiently testified, that there are several tenants of fundry lands and tenements of which the said *William Hopkins* deceased was seised at the time of the rendition of the judgment aforesaid, and after, in your county to whom you may give notice: therefore we command you, that by good and lawful men of your bailiwick you give notice to the tenants of all the lands and tenements of which the said *William Hopkins* deceased was seised at the said time of the rendition of the judgment aforesaid, or ever after, that they be before us at *Westminster* on *Monday* next after the octave of *St. Hilary*, to shew if they have or can say any thing for themselves, why the debt and damages aforesaid on those lands and tenements ought not to be levied and paid to the said *George Barrow*, according to the force, form and effect of the recovery aforesaid, if they shall think fit, and farther to do and receive what our same court before us shall then and there consider concerning them in this behalf; and have there then the names of those by whom you shall give them notice, and this writ. Wtinefs *J. Holt*, knt. at *Westminster* 28th day of *November* in the 10th year of our reign,

Holt. Coleman.

The return.

Scire feci.

On which day before the lord the king at *Westminster* comes the said *George Barrow* in his proper person; and the sheriff of the county aforesaid, to wit, *Walter Lander*, esq; hath returned, that by virtue of that writ to him directed by *Richard Lewes*, and *John Trigg*, good and lawful men of his bailiwick, he hath given notice to *Mary Hopkins*, widow, tenant of one messuage, two barns, one hundred and forty acres of land, ten acres of meadow and twenty acres of pasture with the appurtenances in the parish of *Wednesbury* in his bailiwick, which were the messuage,

suage, lands and tenements of *W. Hopkins*, gent. within named, in his life-time, at the time of the rendition of the judgment within mentioned, to wit, on *Saturday* next after three weeks of *St. Michael* in *Michaelmas* term in the 21st year of the reign of the late lord king *Charles* the Second within written, of which the said *W. Hopkins* then and after was seised in his demesne as of fee, to be before the lord the king at the day and place within contained, to shew if she hath or can say any thing for herself, why the within named *G. Barrow* ought not to have his execution against her for the debt and damages aforesaid within written, to be levied on the lands and tenements of which the said *W. Hopkins* was seised, according to the force, form and effect of the recovery within mentioned, and farther to do and receive as the writ within mentioned commands and requires; and he farther certifies that there are not, nor is, any other tenants or tenant of any other lands or tenements in his county of which the said *W. Hopkins* was seised at the said time of the rendition of the judgment aforesaid, or ever after in his bailiwick, to whom he can give notice, as by the writ aforesaid he was commanded.

Scire faci.

And the said *M. Hopkins*, although the 4th day of plea solemnly called, doth not come, but hath made default: but because the court of the lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the said *George* before the lord the king at *Westminster* until *Wednesday* next after the morrow of the holy *Trinity* to hear their judgment thereon, because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* comes the said *George* in his proper person; whereupon all and singular the premisses being seen, and by the court of the said lord the king now here more fully understood, and mature deliberation being thereon had, it is considered, that the said *George* have his execution against the said *Mary* for the debt and damages aforesaid, to be levied on the lands and tenements aforesaid with the appurtenances whereof the same *Mary* is as aforesaid returned tenant, according to the force, form and effect of the recovery aforesaid, by the default of the said *Mary*, &c.

Default.

Judgment.

Peters against Heather.

THE lady the queen hath sent to the sheriff of *Surry* her writ close in these words, to wit, *Anne*, &c. To the sheriff of *Surry*, greeting: whereas *R. Maddox*, gent. lately in our court before *T. Trevor*, knt. and his companions, our justices of the bench, by our writ, and by the judgment of the same court, hath recovered against *John Heather* late of *Balam* in your county, esq; otherwise called *John Heather* of *Balam* in the county of *Surry*, esq; as well a certain debt of 50*l.* as 50*s.* which to the same *Robert* in our same court were adjudged for his damages which

The entry of a *scire facias* in debt by executors on a judgment by the testator.

Death of the
plaintiff in the
judgment.

Execution a-
warded for the
executors in the
C. B.

Scire facias a-
warded return-
able in K. B.

[390]

Scire feci re-
turned.

which he had by reason of the detention of that debt whereof he is convicted, as by the inspection of the record and proceedings thereof, which into our court before us we lately for certain causes of error commanded to be brought, appears to us on record : and afterwards the said *Robert* at *Balam* in the county of *Surry* aforesaid made his last will and testament in writing, and by the same constituted *F. Peters* and *R. Truby* executors thereof, and afterwards there died; the said *Robert* of the damages aforesaid being not satisfied, and whereon in our same court of the bench aforesaid, before the said *T. Trevor* and his companions our justices at *Westminster*, it was considered by the same court, that the said *Francis* and *Richard* should have execution against the said *John* for the debt and damages aforesaid, and also for 80 s. for their costs and charges which they had by reason of the delay of the execution of the judgment aforesaid, according to the form of the statute in such case lately made and provided, whereof likewise he is convicted, as by the inspection of the record and proceedings, as well in the rendition of the judgment aforesaid, as in the adjudication of execution of the same judgment aforesaid in our court before us at *Westminster* now remaining appears to us on record : and now on the behalf of the said *Francis* and *Richard* in our court before us we have understood, that although judgment is given against the said *John* for the debt and damages aforesaid, and also execution is adjudged for the said *Francis* and *Richard* against the said *John* for the said 80 s. nevertheless execution of the several judgments aforesaid yet remains to be executed for the same *Francis* and *Richard* : wherefore the same *Francis* and *Richard* have besought us to grant them their proper remedy in this behalf ; and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *John* that he be before us on the octave of *St. Hilary* wheresoever we shall then be in *England*, to shew if he hath or can say any thing for himself, why the said *Francis* and *Richard* ought not to have their execution against him for the debt and damages, and their costs and charges aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our court before us shall consider concerning him in this behalf ; and have there the names of them by whom you shall give him notice, and this writ. Witness *T. Parker*, knt. at *Westminster* 28th day of *November* in the 11th year of our reign.

Holt. Ventris.

On which day before the lady the queen at *Westminster* come as well the said *Francis* and *Richard* by *C. S.* their attorney, as the said *John* by *J. Allen* his attorney ; and the sheriff, to wit, *Richard Oldner*, esq; now returns, that he by virtue of the writ aforesaid to him directed by *W. Whitworth* and *John Terry*, good, &c. hath given notice to the said *John Heather* that he should

should be before the lady the queen on this day, to wit, on the octave of St. Hilary wheresoever, &c. to shew in form aforesaid, &c. And hereupon the said Francis and Richard pray their execution against the said John Heather for their debt, damages, costs and charges aforesaid, to be adjudged to them, &c.

And the said John Heather says, that the said Francis and Richard ought not to have their execution against him for the debt and damages aforesaid, because he says, that there is not any such record of adjudication of execution of the judgment aforesaid for the said Francis and Richard against the said John for the debt and damages aforesaid in the said writ of *scire facias* mentioned, as the said Francis and Richard have above alledged: and this he is ready to verify: wherefore he prays judgment if the said Francis and Richard ought to have their execution aforesaid against him for the debt and damages aforesaid, &c.

Ples, that there is no such record.

And the said Francis and Richard say, that they by any thing by the said John above in pleading alledged ought not to be precluded from having their execution aforesaid thereof against him, because they say, that there is such record of adjudication of execution of the judgment aforesaid for the said Francis and Richard against the said John for the debt and damages aforesaid in the said writ of *scire facias* mentioned, as they the said Francis and Richard have above alledged: and this they are ready to verify by that record: and it is said to the said Francis and Richard, by the court of the said lady the queen now here, that they have that record before the said lady the queen wheresoever, &c. at their peril: the same day is given to the parties aforesaid, &c.

Repl', that there is.

Harrison against Ling and another.

WILLIAM and Mary, by the grace of God of England, Scotland, France and Ireland king and queen, defenders of the faith, &c. To the sheriffs of London, greeting: whereas Anthony Ling of the parish of St. Martin in the Fields in the county of Middlesex, victualler, and Daniel Nealer of the parish of St. Giles in the Fields in the county of Middlesex aforesaid, coachman, on the first day of December in the 4th year of our reign before J. Holt, knt. our chief justice, assigned to hold pleas before us, at his chambers situate in Serjeants-Inn in Chancery-lane, London, in their proper persons came, and according to the form of the statute to avoid unnecessary delays of executions, acknowledged that they owed, and each of them acknowledged that he owed, to S. Harrison 261 l. 2 s. of lawful money of England, to be paid to the same Samuel, his executors or assigns; and unless they did pay the same, the said Anthony and Daniel granted, and each of them for himself granted, that the said 261 l. 2 s. of their and each of their lands and chattels should be made, and to the use of the said Samuel levied upon the condition following, to wit, that whereas the said Samuel lately

Scire facias against bail on a writ of error on a judgment in K. B.

3 Jac. c. 8.
13 C. 2. ft. 2.
c. 2. § 9.

[391]

lately in our court before us at *Westminster* by bill, without our writ, and by the judgment of the same court, had recovered against *John Griffin* 120 *l.* debt, and also 10 *l.* 11 *s.* for his damages which he had sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *John Griffin* is convicted, as appears on record in our same court: and whereas the said *John Griffin* had prosecuted a certain writ of error upon the judgment aforesaid, returnable before our justices of the common bench, and the barons of our exchequer of the degree of the coif, in our exchequer chamber on *Saturday* the 28th day of *January* then next following; if therefore the said *John* should prosecute our said writ of error with effect, and if the judgment aforesaid should be affirmed against the said *John*, then if the same *John* should satisfy and pay to the same *Samuel* the debt and damages aforesaid, and also all such costs and damages as should be adjudged to the said *Samuel* by reason of the delay of his execution upon the judgment aforesaid, by the pretence of prosecuting our said writ of error, then the recognizance aforesaid should be void and of no effect, but otherwise should remain in its full force and effect, as by the record thereof in our court before us likewise remaining manifestly appears: and whereas in the cause aforesaid, on the writ of error aforesaid, it was in such manner proceeded, that in our said court of exchequer chamber at *Westminster* before the judges of that court on *Saturday* the 25th day of *November* in the 5th year of our reign, the judgment aforesaid was in all things affirmed, as by the record thereof in our said court before us more fully appears: nevertheless the said *John* hath not paid and satisfied to the said *Samuel* the debt and damages aforesaid, and also 8 *l.* for the costs and damages which were adjudged to the said *Samuel* by reason of the delay of his execution on the judgment aforesaid, by the pretence of prosecuting of our said writ of error, as by the suggestion of the said *Samuel* we have in our court before us understood: wherefore the said *Samuel* hath besought us to grant him his proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *Anthony* and *Daniel*, that they be before us at *Westminster* on *Thursday* next after 15 days of *St. Hilary*, to shew if they have or can say any thing for themselves, why the said *Samuel* ought not to have his execution of the said 261 *l.* 2 *s.* and also of the said 8 *l.* according to the force, form and effect of the recognizance aforesaid, if they shall think fit, and farther to do and receive what our court before us shall then and there concerning them consider in this behalf; and have there then the names of those by whom you shall give them notice, and this writ. Witness *J. Holt*, knt. at *Westminster* 23d day of *January* in the 5th year of our reign.

The

The within named *Anthony* and *Daniel* have nothing, neither hath either of them any thing in our bailiwick, whereby we can give notice to them, or either of them, neither are they, nor is either of them, found in the same. *Nilil return'd.*

The answer of $\left\{ \begin{array}{l} T. Abney, \text{ knt.} \\ \text{and} \\ W. Hodges, \text{ knt.} \end{array} \right\}$ sheriffs.

Hyde at the suit of *Johnson*.

AND the said *Nathaniel*, being one of the attornies in the said court of the said lord the king, before the king himself present in the same court in his proper person says, that the said *Mary* ought not to have her execution against him for the debt and damages aforesaid, because he says, that there is not any such record of the recovery of the debt and damages aforesaid, as by the writ aforesaid is above supposed : and this he is ready to verify : wherefore he prays judgment if the said *Mary* ought to have execution against him for the debt and damages aforesaid, &c. *No such record.*

And the said *Mary* says, that by any thing by the said *Nathaniel* above in pleading alledged she ought not to be precluded from having her execution against him for the debt and damages aforesaid, because she says, that there is such record of the recovery aforesaid in the said court of the said lord the king before the king himself, remaining on record in the term of the holy Trinity in the first year of the reign of the said lord the king in the roll 254 ; and she prays that that term and roll by the court of the said lord the king may be seen and inspected : and because the court of the said lord the king here are not yet advised to give their judgment thereon, day therefore is given to the parties aforesaid until day next after to hear their judgment on that issue, because the court of the said lord the king here thereof not yet, &c. *There is.*

Boothby, Bart. at the suit of *Vincent*.

AND the said *William Boothby* by *J. L.* his attorney comes and says, that the said *Edward Vincent* ought not to have execution against him for the debt and damages aforesaid of the lands and tenements in the return of the writ of *scire facias* aforesaid mentioned, whereof he is returned tenant, because he says, that the said *Henry Boothby*, in the said writ of *scire facias* named, or any other person or persons, to the use of the said *Henry* and his heirs at the time of the rendition of the judgment aforesaid in the same writ abovementioned, or ever after, were not, nor was, seised of the same lands and tenements, or of any parcel thereof, in his demesne as of fee : and this he is ready to verify : wherefore he prays judgment if the said *Edward* ought to have execution *Plea by tenant, that the defendant was not seised, &c.*

cution against him for the debt and damages aforesaid on the lands and tenements aforesaid, &c.

[392]

Puerfoy and another at the suit of Littleton.

Plea, that the bail was to an original in *Middlesex* and the recovery in *Stafford*.

AND the said *George Puerfoy* and *John Gilbert* by *J. E.* their attorney come and say, that the said *Edward Littleton* ought not to have execution against them for the said 400 *l.* separately by them as aforesaid acknowledged, by virtue of the recognisance aforesaid, because they say, that the said plea of debt on demand of 200 *l.* against the said *T. Kinnersey* by him the said *E. Littleton* in the court of the said lord and lady the king and queen of the bench here prosecuted, in the condition of the said recognisance above specified, in and upon which the same recognisance or bail aforesaid, so as aforesaid was made, was prosecuted and levied in the county of *Middlesex*, by and upon an original writ of the lord and lady the king and queen, to the sheriff of the county of *Middlesex* directed; in which said plea or action laid in the county of *Middlesex*, no judgment for the said *E. Littleton* against the said *T. Kinnersey* after the time of the recognisance aforesaid made, and before the issuing of the said writ of *scire facias* in the said court here was or yet is given; but the said recovery of the said 210 *l.* 10 *s.* by the said *E. Littleton* against the said *T. Kinnersey* had and obtained, was in a plea or action of debt arising and laid in the county of *Stafford* in the said court here prosecuted by the same *E. Littleton* against the said *T. Kinnersey*, in which case when there is such variance from the county, such bail of recognisors, according to the custom of the court of the lord and lady the king and queen of the bench here, by their recognisance or bail in that behalf, ought not in any manner to be charged: and this they are ready to verify: wherefore they pray judgment if the said *E. Littleton* ought to have execution against them for the said 400 *l.* separately by them as aforesaid acknowledged, by virtue of the recognisance aforesaid, &c.

Creswell Levinz.

Orchard against Shepheard.

Another *scire facias* depending pleaded in abatement.

AND the said *Samuel* on the 4th day of plea being solemnly called by *J. N.* his attorney likewise comes; whereupon the said *George* prays his execution against the said *Samuel* for the damages aforesaid to be adjudged to him, &c. and the said *Samuel* comes and defends the force and injury when, &c. and prays judgment of the writ of *scire facias* aforesaid, because he says, that the said *G. Orchard* before the issuing of the said writ of *scire facias* now here in court produced, to wit, on the 8th day of *May* in the 12th year of the reign of the lord *William* the Third, now king of *England*, &c. aforesaid, prosecuted out of the court of the said lord the now king before the king himself (the same court then being at *Westminster* in the county of *Middlesex*)

Middlesex) a certain other writ of *scire facias* against the said Samuel, by the name of *S. Shepherd* late of *London*, merchant, the tenor of which said writ follows in these words, to wit, *William, &c.* To the sheriffs of *London*, greeting: whereas *G. Orchard* lately in our court of common bench hath recovered against *S. Shepherd* late of *London*, merchant, 960 *l.* as well for his damages in a plea of trespass on the case, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as it appears to us on record, the record and proceedings of which said judgment we have lately for certain reasons caused to be brought before us; and altho' judgment thereof be given, yet the execution for the damages aforesaid still remains to be made to him: wherefore the same *George* hath besought us to grant him his proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said Samuel that he be before us on the morrow of the holy *Trinity* wheresoever we shall then be in *England*, to shew if he hath or can say any thing for himself, why the said *George* ought not to have execution against him, according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our same court before us shall consider in that behalf concerning him; and have there then the names of those by whom you shall give him notice, and this writ. Witness *J. Holt*, knt. at *Westminster* the 8th day of *May* in the 12th year of our reign: to which said writ of *scire facias* he the same Samuel on the day of the return of that writ in the same court of the said lord the king before the king himself (the same court then being at *Westminster* aforesaid in the county of *Middlesex* aforesaid) hath appeared and pleaded, and the writ and that plea in the same court of the said lord the now king before the king himself yet remain undiscussed and undetermined, and not discontinued or annulled: and this he is ready to verify by the record thereof in the said court of the said lord the king before the king himself at *Westminster* aforesaid remaining: wherefore the said Samuel as before prays judgment of the said writ of *scire facias* now here in court produced, and that that writ may be quashed, &c. with this, that the same *S.* will verify, that the said *S.* in the writ of *scire facias* aforesaid above pleaded named, and the said Samuel in the said writ of *scire facias* now here in court produced named, is one and the same person, and not another nor different; and that the said writ of *scire facias* above pleaded, and the said writ of *scire facias* now here in court produced, were obtained for one and the same damages, and not other nor different.

The *scire facias* set forth.

Whereto he hath appeared and pleaded, &c.

[393]

And the said *George* prays leave to imparl thereto; and to him it is granted, &c. And upon this day is given to the parties aforesaid before the lord the king until from the day of *St. Michael* in three weeks wheresoever, &c. to wit, to the said *George* to imparl, and then to reply, &c. On which day before the lord

Imparlance.

Repl. that it is discontinued.

lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; and the said *George* farther prays leave to imparl thereto; and to him it is granted, &c. And upon this day is given to the parties aforesaid before the lord the king until from the day of *St. Michael* in one month wheresoever, &c. to wit, to the said *George* to imparl, and then to reply, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; and the said *George* says, that by any thing by the said *Samuel* above in pleading before alledged his writ of *scire facias* aforesaid ought not to be quashed, because he says, that the plea aforesaid upon the writ of *scire facias* aforesaid in the plea aforesaid of him the said *Samuel* above-mentioned from the day of *St. Michael* in three weeks before the lord the king at *Westminster* by the judgment of the same court is discontinued, as by the record thereof in the same court remaining appears: and this the same *George* is ready to verify by that record: wherefore he prays judgment, and that his writ of *scire facias* aforesaid now here in court depending may be adjudged good, &c.

Rejoinder no such record.

And the said *Samuel* says, that there is not any record of the discontinuance of the writ of *scire facias* aforesaid in the plea of the said *Samuel* aforesaid above-mentioned here in the court of the said lord the king remaining: and this he is ready to verify: wherefore as before he prays judgment of the said writ of *scire facias* now here in court produced, and that that writ may be quashed, &c.

Surrejoinder that there is.

And the said *George* says, that there is such record of the discontinuance of the said writ of *scire facias* in the said plea of him the said *Samuel* above-mentioned, as the said *George* above in replying hath alledged, as appears by the record thereof in *Trinity* term in the 12th year of the reign of the said lord the now king in the roll 176. and he prays that the term and that roll by the court of the said lord the king now here may be seen and inspected: and because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day is given to the parties aforesaid before the lord the king until on the octave of *St. Hilary* wheresoever, &c. to hear their judgment on that issue, because the court of the said lord the king now here thereof not yet, &c.

Short and another and Beetham.

Payment pleaded.

AND the said *Peter* and *Samuel* in their proper persons come and say, that the said *William* ought not to have his execution against them the said *Peter* and *Samuel* for the damages aforesaid, because they say, that they after the recovery of the judgment aforesaid in the writ of *scire facias* aforesaid above-mentioned, and before the issuing of the said writ of *scire facias*, to wit, on the first day of *January* in the 5th year of the reign of the said lord the now king, paid to the said *William* the said

114 l. 6 s. 8 d. in satisfaction and discharge of the judgment aforesaid, to wit, at *Eastkeale* in the county aforesaid; which said 114 l. 6 s. 8 d. the said *William* then and there received and accepted in full satisfaction and discharge of the judgment aforesaid: and this they are ready to verify: wherefore they pray judgment if the said *William* ought to have his execution against them for the damages aforesaid, &c.

Jones and Tully.

[394]

— BUT hath made default: therefore it is considered, that the said *John Jones* have his possession of the terms aforesaid yet to come of and in the several tenements aforesaid with the appurtenances, and also his execution against the said *Arthur* for the damages aforesaid, according to the force, form and effect of the recovery aforesaid, by the default of the said *Arthur*, &c.

Judgment by default in a scire facias in ejectment.

Povey against Cesar.

England, THE lady the queen hath sent to the sheriffs of London her writ close in these words, to wit, *Anne* by the grace of God, of *Great Britain, France and Ireland* queen, defender of the faith, &c. To the sheriffs of *London*, greeting: whereas *Josias Povey*, and so on to witness *J. Holt*, knt. at *Westminster* 23d day of *October* in the 8th year of our reign: on which day before the lady the queen at *Westminster* comes the said *Josias* in his proper person; and the sheriffs of *London*, to wit, *Richard Guy*, esq; and *Charles Hopson*, esq; return, that the said *John* hath nothing in their bailiwick whereby they can give him notice, neither is he found in the same; and the said *John* doth not come: therefore as before the sheriffs are commanded, that by good and lawful men of their bailiwick they give notice to the said *John*, that he be before the said lady the queen at *Westminster* on *Monday* next after the morrow of *All Souls*, to shew in form aforesaid, if, &c. and farther, &c. The same day is given to the said *Josias* there, &c. On which day before the lady the queen at *Westminster* comes the said *Josias* in his proper person; and the said sheriffs of *London* as before return, that the said *John* hath nothing in their bailiwick whereby they can give him notice, neither is he found in the same: and hereupon the said *Josias* prays his execution against the said *John* for the debt and damages aforesaid to be adjudged to him, &c.

Scire facias quare executionem non.

And the said *John* by *William Beard* his attorney comes and says, that the said *Josias* ought not to have execution of the debt and damages aforesaid against him, because he says, that after the rendition of the judgment aforesaid, and before the issuing of the first writ of *scire facias*, to wit, in *Hilary* term in the 7th year of the reign of the lady the now queen, the said *Josias*, for the obtaining of his debt and damages aforesaid, prosecuted out

Plea levied by fieri facias.

of the court here of and upon the judgment aforesaid, a certain writ of the said lady the queen of *feri facias*, to the sheriff of the county of *Surry* directed, against the said *John*; by which said writ the same sheriff was commanded, that of the goods and chattels of the said *John* in his bailiwick he should cause to be made the debt and damages aforesaid, and should have that money in court here on *Wednesday* next after 15 days of *Easter* then next ensuing, to be paid to the said *Josias* for the debt and damages aforesaid; which said writ afterwards and before the return thereof, to wit, on the 20th day of *February* in the 7th year abovesaid, at *Croydon* aforesaid in the said county of *Surry*, was delivered to one *William Stevens*, esq; (the same *William Stevens* then and until and after the return of that writ being sheriff of the same county) by virtue of which said writ the same sheriff after and before the return thereof, to wit, on the first day of *March* in the 7th year abovesaid, at *Croydon* aforesaid, the debt and damages aforesaid on the goods and chattels of him the said *John* caused to be levied: and this he is ready to verify: wherefore he prays judgment if the said *Josias* ought to have his execution against him for the debt and damages aforesaid, &c.

Jos. Aylyff.

Essex.

And the said *Josias* says, that he by any thing by the said *John* above alledged ought not to be precluded from having his execution aforesaid thereof against the said *John* for the debt and damages aforesaid, because he says, that the said *William Stevens* in the plea aforesaid of him the said *John* mentioned, hath not caused to be levied the debt and damages aforesaid on the goods and chattels of him the said *John*, in manner and form as the said *John* hath above alledged: and this he prays may be inquired of by the country: and the said *John* likewise, &c. Therefore, &c.

[395]

Farmer against the bail of Ryves.

Sci. e facias
against bail in
K. B.
2 Rol. Abr.
336. 1 W.
Lutw. 1282.

THE lady the queen hath sent to the sheriff of *Middlesex* her writ close in these words, to wit, *Anne* by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. To the sheriff of *Middlesex*, greeting: Whereas *Elizabeth Farmer* lately in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, hath recovered against *Brune Ryves* 66 l. for her damages which she sustained as well by reason of the non-performance of certain promises and assumptions to the same *Elizabeth* by the said *Brune Ryves* lately made, as for her costs and charges by her about her suit in that behalf expended, whereof the same *Brune* is convicted, as it appears to us on record: and now on the part of the said *Elizabeth Farmer* in our same court before us we have understood, that altho' judgment thereof be given, yet execution for the damages aforesaid still remains to be made to her:

her: and whereas also *Thomas Bartley* of *Woodstreet, London*, victualler, *William Hawes* of the *Falcon* in *Fetter-lane*, victualler, *William Johnson* of *Salisbury-square* in *Fleet-street, London*, gent. *Peter Tanner*, of the *Middle-Temple Gate, London*, stationer, *Christopher Clapham*, of the parish of *St. Andrew Holborn* in the county of *Middlesex*, gent. *Charles Bevan* of *New-street* in *Fetter-lane* aforesaid, gent. *John Farrington* of *Hemlock-court* near *Lincoln's-Inn Fields*, gent. and *Thomas Baker* of *Pater-noster-row, London*, upholsterer, otherwise, to wit, in *Trinity term* in the 7th year of our reign in our same court before us at *Westminster* personally came and became surety, and each of them for himself became surety for the said *B. Ryves*, that if it should happen that the same *B. Ryves* should be convicted in the plea aforesaid, then the same *T. B. W. H. W. J. P. T. C. C. C. B. J. F.* and *T. B.* granted, and each of them for himself granted, that all such damages, costs and charges, as to the same *Elizabeth* in that behalf should be adjudged, on their and each of their lands and chattels should be made, and to the use and behoof of the said *Elizabeth* levied, if it should happen that the same *B. Ryves* should not pay the debt, costs and charges aforesaid to the said *Elizabeth*, nor surrender himself on that account to the prison of the marshal of our *Marshalsea* before us: nevertheless the said *B. Ryves* the damages, costs and charges aforesaid, to the same *Elizabeth* hath not yet paid, nor surrendred himself on that account to the prison of the marshal of our *Marshalsea* aforesaid before us, as we have by the suggestion of the said *Elizabeth Farmer* in our same court before us understood: wherefore the same *Elizabeth* hath besought us to grant her her proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *Thomas Bartley, W. H. W. J. P. T. C. C. C. B. J. F.* and *T. B.* that they be before us at *Westminster* on the morrow of the purification of the blessed virgin *Mary*, to shew if they have or can say any thing for themselves, why the said *Elizabeth Farmer* should not have her execution against them the said *T. B. W. H. W. J. P. T. C. C. C. B. J. F.* and *T. B.* for the damages aforesaid, according to the force, form and effect of the recognisance aforesaid, if they shall think fit, and farther to do and receive all and singular those things which in our same court before us shall be concerning them then and there considered in this behalf; and have there then the names of those by whom you shall give them notice, and this writ. Witness *J. Holt*, knt. at *Westminster* 28th day of *January* in the 8th year of our reign, on which day before the lady the queen at *Westminster* comes the said *Elizabeth Farmer* in her proper person; and the sheriff of *Middlesex*, to wit, *Richard Hoare*, knt. and *Thomas Dunc*, esq; returns, that the said *T. B. W. H. W. J. P. T. C. C. C. B. J. T.* and *T. B.* have not, nor hath any of them, any thing in his bailiwick whereby he can give notice to them, or any of them,

An alias
awarded.

Nihil returned.

Six of them
make default.

[396]

The 7th pleads,
no ca. fa. sued
out.

The other
pleads a fa. fa.
executed.

them, nor are they, nor is any of them, found in the same; and they do not come, nor doth any of them come: therefore as before the sheriff is commanded, that by good and lawful men of his bailiwick he give notice to the said *T. B. W. H. W. J. P. T. C. C. C. B. J. F.* and *T. B.* that they be before the lady the queen at *Westminster* on *Saturday* next after the octave of the purification of the blessed virgin *Mary*, to shew in form aforesaid, if, &c. and farther, &c. The same day is given to the said *Elizabeth* there, &c. On which day before the lady the queen at *Westminster* comes as well the said *Elizabeth* in her proper person as the said *J. F.* and *T. B.* in their proper persons; and the sheriff as aforesaid returns, that the said *T. B. W. H. W. J. P. T. C. C. C. B. J. F.* and *T. B.* have not, nor hath any of them, any thing in his bailiwick whereby he can give them or any of them notice, nor are they, nor is any of them, found in the same: and the said *Thomas Bartley, William Hawes, W. J. P. T. C. C.* and *C. B.* altho' on the same day solemnly called, do not come, nor doth any of them come, but have made default; whereupon the said *Elizabeth* prays her execution against the said *T. B. W. H. W. J. P. T. C. C. C. B. J. F.* and *T. B.* for the damages aforesaid, according to the force, form and effect of the recognisance aforesaid, to her to be adjudged, &c. And the said *J. F.* in his proper person comes and says, that the said *Elizabeth* ought not to have her execution for the damages, costs and charges aforesaid against him, by pretence of the recognisance aforesaid, because he says, that after the rendition of the judgment aforesaid against him the said *B. Ryves*, at the suit of the said *Elizabeth Farmer*, in form aforesaid had, and before the issuing of the said first writ of the said lady the queen of *scire facias* against him the said *J. F.* as bail for him the said *B. Ryves*, at the suit of the said *E. Farmer*, no writ of *capias ad satisfaciendum* upon that judgment by the said *E. Farmer* against him the said *B. Ryves* was duly returned and filed in the court of the said lady the queen now here on record, which, according to the custom of the said court for time immemorial used and approved in the same, ought to be before any writ of *scire facias* against him the said *J. F.* as bail as aforesaid, ought to have issued: and this is he is ready to verify: wherefore he prays judgment if the said *Elizabeth Farmer* ought to have her execution against him the said *J. F.* for the damages, costs and charges aforesaid, by pretence of the recognisance aforesaid, &c. And the said *T. B.* says, that the said *Elizabeth* ought not to have execution for the damages aforesaid against him, because he says, that after the rendition of the judgment aforesaid, and before the issuing of the said first writ of *scire facias*, to wit, in *Hilary* term in the 8th year of the reign of the lady the now queen, the said *Elizabeth*, for the obtaining of her damages aforesaid, prosecuted out of the court here of and upon the judgment aforesaid a certain writ of the said lady the queen of *feri facias*, to the sheriff of the county of *Surry* directed, against the said *B. R.* by which

said writ the same sheriff was then commanded, that of the goods and chattels of the said *B. R.* in his bailiwick he should cause to be made the damages aforesaid, and should have here that money on *Wednesday* next after 15 days of *Easter* then next ensuing, to be paid to the said *Elizabeth* for the damages aforesaid; which said writ afterwards and before the return thereof, to wit, on the 20th day of *February* in the 8th year aforesaid, at *Croydon* in the said county of *Surry*, was delivered to one *John Eversfield*, esq; (the same *John Eversfield* then and until and after the return of that writ being sheriff of the same county) by virtue of which said writ the same sheriff afterwards and before the return thereof, to wit, on the first day of *March* in the 8th year above said, at *Croydon* aforesaid, the damages aforesaid on the goods and chattels of the said *B. R.* in his bailiwick caused to be made: and this he is ready to verify: wherefore he prays judgment if the said *Elizabeth* ought to have her execution against him for the damages aforesaid, &c.

And the said *Elizabeth* as to the plea of the said *J. F.* says, that she by any thing by the said *J. F.* above in pleading alleged ought not to be precluded or delayed from having her execution aforesaid against him for the damages aforesaid, by virtue of the recognisance aforesaid, because she says, that after the rendition of the judgment aforesaid against the said *B. Ryves*, at the suit of the said *Elizabeth* in form aforesaid had, and before the issuing of the said first writ of the said lady the queen of *scire facias* against him the said *J. F.* as bail for the said *B. Ryves*, at the suit of the said *Elizabeth*, to wit, on the 28th day of *November* in the 8th year of the reign of the said lady the now queen, &c. she the same *Elizabeth* at *Westminster* in the county of *Middlesex* obtained and prosecuted out of the court of the said lady the queen before the queen herself, the same court being then and there at *Westminster* aforesaid, a certain writ of the said lady the queen of *capias ad satisfaciendum* for the damages, costs and charges aforesaid, upon the judgment aforesaid against the said *B. Ryves*, to the then sheriffs of the city of *London* directed; by which said writ the same lady the queen commanded the said then sheriffs of *London*, that they should take the said *B. Ryves*, if he should be found in their bailiwick, and him should safely keep, so that they might have his body before the said lady the queen at *Westminster* on *Thursday* next after the octave of *St. Hilary* then next ensuing, to satisfy the said *Elizabeth* the said 66 l. for her damages, costs and charges aforesaid, upon the judgment aforesaid, against the said *B. Ryves*: on which day the said *E.* in her proper person came into the same court of the said lady the queen before the queen herself (the same then and yet being at *Westminster* aforesaid) and the said sheriffs of *London*, to which *R. Hoare*, knt. and *T. Dunck*, esq; on that day returned, that the said *B. Ryves* was not found in their bailiwick, as by the said writ of *capias ad satisfaciendum*, and the return thereof, in the same court of the said lady the queen before the queen herself on

Repl. as to the
ca. fa. that one
was sued out,

and returned
non inventus.

record remaining filed, is more fully manifest and appears: and thus she is ready to verify by that record, &c. and she prays that the record of the writ aforesaid, and the return thereof, by the court of the said lady the queen now here may be seen and inspected, &c.

And as to the
feri facias, that
none was sued
out.

And the said *E.* says, that she by any thing by the said *T. Baker* above in pleading alledged ought not to be precluded or delayed from having her execution for the damages aforesaid against him, because she says, that the said *E.* at any time hitherto for the obtaining of the damages aforesaid hath not prosecuted out of the court here of and upon the judgment aforesaid any writ of the said lady the queen of *feri facias*, to the sheriff of the county of *Surry* directed, against the said *T. Baker*, as the said *T. B.* above by pleading hath alledged; and this she prays may be inquired of by the country: and the said *T. B.* thereof likewise, &c. And because the court of the said lady the queen now here are not yet advised to give their judgment as well of and upon the premisses against the said *T. B. W. H. W. J. P. T. C. C.* and *C. B.* whereof they have made default, as of and upon the premisses between the said *Elizabeth* and the said *J. F.* above pleaded, day therefore is given as well to the same *Elizabeth* as to the said *J. F.* before the same lady the queen at *Westminster* until day next after to hear their judgment thereon,

[397]

Venire awarded.

because the court of the said lady the queen here thereof not yet, &c. and as to try the issue aforesaid between the said *Elizabeth* and the said *Thomas Baker* above joined to be tried by the country, the sheriff is commanded, that he cause to come before the lady the queen at *Westminster* on the same day 12, &c. by whom, &c. and who neither, &c. to recognise, &c. because as well, &c. The same day is given as well to the said *Elizabeth* as to the said *T. B.* there, &c. On which day before the lady the queen at *Westminster* come as well the said *Elizabeth* in her proper person, as the said *J. F.* and *T. B.* in their proper persons: but because the court of the said lady the queen now here are not yet advised to give their judgment as well of and upon the premisses against the said *T. B. W. H. W. J. P. T. C. C.* and *C. B.* whereof they have made default, as of and upon the premisses between the said *Elizabeth* and the said *J. F.* above pleaded, day therefore is given as well to the said *Elizabeth* as to the said *J. F.* before the same lady the queen at *Westminster* until day next after to hear their judgment thereon, because the court of the said lady the queen now here thereof not yet, &c. and as to try the issue aforesaid between the said *Elizabeth* and the said *Thomas Baker* above joined to be tried by the country, the sheriff hath returned the writ aforesaid in all things served and executed, together with a panel of the names of the jurors, whereof none, &c. therefore the sheriff is commanded, that he distrain the jurors aforesaid by all the lands, &c. and that of the issues, &c. and that he have their bodies before the lady the queen at *Westminster* on the same day, or before

Distringas a-
warded.

fore the trusty and beloved *Thomas Parker*, knt. chief justice of the said lady the queen, assigned to hold pleas before the queen herself, if he shall first come on day next after at *Westminster* aforesaid in the great hall of pleas there, by the form of the statute, &c. for want of jurors, &c. therefore let the sheriff have the bodies, &c. The same day is given as well to the said *Elizabeth* as to the said *Thomas B.* there, &c.

18 El. c. 12.
12 Geo. c. 31.

Thurstout and Reyner.

AND the said *John* and *Thomas* in their proper persons come and defend the force and injury, &c. and pray oyer of the first writ of the said lord the king of *scire facias*, and of the return of the same writ, and they are read to them in these words, to wit, *George*, &c. to the end of the writ; they likewise pray oyer of the said writ of the said lord the king of *alias scire facias*, and of the return of the same writ, and they are read to them in these words, to wit, *George* by the grace of God of *Great Britain, France and Ireland* king, defender of the faith, &c. To the sheriff of *Derby*, greeting, &c. and farther to do and receive all and singular those things which our court before us shall then consider concerning them in this behalf; and have there then the names of those by whom you shall give them notice, and this writ. Witness *Thomas Pratt* at *Westminster* 12th day of *February* in the 6th year of our reign; which being read and heard, the same * *John* and *Thomas* say, that the writ of *scire facias* aforesaid in form aforesaid issued is not sufficient in law to maintain him the said *John Thurstout* to have his execution aforesaid against them the said * *John* and *Thomas* of the possession of the term, and the damages, costs and charges aforesaid to which the said * *John* and *Thomas* have no necessity, nor are by the law of the land obliged, to answer: and this they are ready to verify: wherefore for that the said writ of *scire facias* is not rightfully issued, and is insufficient in law, the same * *John* and *Thomas* pray judgment, and that the said *John Thurstout* may be precluded from having his execution aforesaid against them the said * *John* and *Thomas* of the possession of the term, and the damages, costs and charges aforesaid; and for causes of demurrer in this behalf the same *John* and *Thomas* shew these causes following, that the writ aforesaid is witnessed by *Thomas Pratt* when it ought to have been witnessed by *John Pratt*, and that the writ aforesaid is uncertain, and wants form.

Oyer prayed of the writs of *scire facias* and returns.

Demurrer.

* There are 14 more defendants in the original, but as they are not named at first, they are here omitted.

C. Wearg.

Butler and Britland.

[398]

Therefore it is considered, that the said *George* have her execution against the said *George Britland* for the debt and damages aforesaid, according to the force, form and effect of the recovery aforesaid: and it is farther considered by the

Judgment in *sci. fac.* for the plaintiff.

Scire Facias.

same court of the said lord the king, that the said *Grace* do recover against the said *George* 14 *l.* for her costs and charges by her about her suit in this behalf sustained to the same *Grace*, by the court of the said lord the king now here, by her assent, according to the form of the statute in such case made and provided: and the said *Grace* may have thereof likewise execution, &c.

Garlick and Gantlet.

Plea to a *scire facias* against bail, that he is not the same person.

JOHN *Garlick*, who is now on the writ of *scire facias* aforesaid summoned, in his proper person comes and says, that he upon the writ aforesaid is summoned to shew cause, according to the command of the writ aforesaid, and says, that the said *Roger Gantlet* ought not to have execution against him for the debt, damages, costs and charges aforesaid, because he says, that a certain other *John* came into the same court here before *W. S. knt.* chief justice of the lord the king, assigned to hold pleas before the king himself at his mansion house, situate in *Chancery-lane* in the county of *Middlesex*, and became one of the surety and bail for the said *Thomas Garlick* in the plea aforesaid, at the suit of the said *Roger Gantlet*, in manner and form as by the writ aforesaid is above supposed; without that, that the same *John* now appearing is the same person who came into the same court here before *W. S. knt.* the chief justice aforesaid, and became one of the surety and bail for the said *Thomas Garlick* in the plea aforesaid, at the suit of the said *Roger Gantlett*, as by the writ of *scire facias* aforesaid is above supposed: and this the same *John Garlick* now appearing is ready to verify: wherefore he prays judgment, &c.

Adams against the tertenants of Savage.

The record of *nisi prius* in a *scire facias* by an administrator against the tertenants.
Salk. 40.
Mod. Caf. 134.

Dorset, **T**HE lord the king hath sent to the sheriff of the county of *Dorset* his writ close in these words, to wit, *William* the Third, by the grace of God, of *England, Scotland, France* and *Ireland* king, defender of the faith, &c. To the sheriff of *Dorset*, greeting: whereas *Sarah Adams*, widow, lately in the court of the lord *Charles* the Second, late king of *England*, before the late king himself at *Westminster*, to wit, in *Easter* term in the 34th year of the reign of the same late king, by bill, without the writ of the said late king, and by the judgment of the same court, hath recovered against *George Savage*, knt. otherwise called *George Savage* of *Blaxworth* in the county of *Dorset*, esq; as well a certain debt of 200 *l.* as 40 *s.* for her damages which she hath sustained as well by reason of the detention of that debt, as for her costs and charges by her about her suit in that behalf expended, whereof he is convicted, as by the record and proceedings thereof in our court before us now remaining manifestly appears: nevertheless execution of the judgment

ment aforefaid yet remains to be executed, and as well the faid *George* as the faid *Sarah* are dead, as by the fuggellion of *John Adams* the adminiftrator of the goods and chattels, rights and credits, which belonged to the faid *Sarah Adams* at the time of her death, we have in our court before us lately underftood: and becaufe we are willing that thofe things which in the faid court of the faid late king were lawfully tranfacted fhould be carried into due execution, we command you, that by good and lawful men of your bailiwick you give notice to the tenants of all the lands and tenements in your bailiwick of which the faid *George Savage* was feifed in fee-fimple on *Saturday* next after three weeks of *Eafter* in the thirty-fourth year of the reign of the faid lord *Charles* the Second, late king of *England*, &c. abovefaid, on which day the judgment aforefaid was given, or ever after, that they be before us at *Westminfter* on *Friday* next after the octave of *St. Martin*, to fhew if they have or can fay any thing for themfelves, why the debt and damages aforefaid ought not to be levied on thofe lands and tenements, and paid to the faid *John*, according to the force, form and effect of the recovery aforefaid, if they fhall think fit, and farther to do and receive what our faid court before us concerning them fhall then and there confider in this behalf; and have there then the names of thofe by whom you fhall give them notice, and this writ. Witnefs *J. Holt*, knt. at *Westminfter*, 23d day of *October* in the 13th year of our reign.

[9]

Holt. Coleman.

On which day before the lord the king at *Westminfter* comes the faid *John Adams*, the natural fon of the faid *Sarah Adams*, by *William Underwood* his attorney, and fays, that after the judgment aforefaid in form aforefaid given, to wit, on the 10th day of *May* in the 12th year of the reign of the lord the now king, at *Blaxworth* aforefaid in the county aforefaid, the faid *Sarah Adams* died intefstate, being not paid the debt and damages aforefaid; after the death of which faid *Sarah*, adminiftration of all and fingular the goods and chattels, rights and credits, which belonged to the faid *Sarah* at the time of her death by *Charles Sloper*, clerk, mafter of arts, official principal of the reverend *Robert Cooper*, clerk, mafter of arts, archdean of the archdeanry of *Dorset* lawfully conftituted, to whom the commiffion of that adminiftration of right belonged, on the 21ft day of *July* in the 13th year of the reign of the now king, at *Blaxworth* aforefaid in the county aforefaid, to the fame *John* in due form of law was committed; and the fheriff of the county of *Dorset*, to wit, *W. Fitch*, efq; now returns, that he the faid *W. Fitch*, by virtue of the writ aforefaid to him directed by *A. S.* and *W. M.* good and lawful men of his bailiwick, hath given notice to *D. Sadler* and *Philippa* his wife, tenants of the capital manfion-houfe with the appurtenances called *Blaxworth Houfe*, and of the manor of *Blaxworth* in his county, to *Philip Strickland*, tenant

Death of the plaintiff in the judgment.

Adminiftration granted.

It fhould have been granted by the metropolitan.

The return.

nant

nant of a farm, messuage or tenement, called the *Higher Farm*, and of 193 acres of land, wood, meadow and pasture, more or less, thereto belonging, situate, lying and being within the parish of *Blaxworth* aforesaid; and also tenant of one other farm, messuage or tenement, called the *Middle Farm*, and of 280 acres of land, wood, meadow and pasture, more or less, thereto belonging, situate, lying and being within the parish aforesaid; and likewise tenant of one other farm, messuage or tenement, called the *Lower Farm*, and 86 acres of land, wood, meadow and pasture, more or less, thereto belonging, situate, lying and being within the parish aforesaid, late in the tenure or occupation of *H. Trenchard*; to *Jehonadab Savage*, tenant of one messuage or tenement, and 80 acres of land, meadow and pasture with the appurtenances thereto belonging and appertaining; to *W. Savage*, tenant of one messuage or tenement, and 16 acres of land, meadow and pasture, with the appurtenances thereto belonging, to *P. Hayward*, tenant of three other messuages or tenements, and 80 acres of land, meadow and pasture with the appurtenances thereto belonging, to *J. Dewey*, tenant of another messuage or tenement, and 30 acres of land, meadow and pasture with the appurtenances thereto belonging, to *S. Hadderley*, tenant of one other messuage or tenement, and 7 acres of land, meadow and pasture with the appurtenances thereto belonging, to *J. Jefferies*, tenant of one other messuage or tenement, and 40 acres of land, meadow and pasture with the appurtenances thereto belonging, to *M. Alner*, widow, tenant of one other messuage or tenement, and 40 acres of land, meadow and pasture with the appurtenances thereto belonging, to *T. Laming*, tenant of one other messuage or tenement, and 30 acres of land, meadow and pasture with the appurtenances thereto belonging and appertaining, to *N. Ery*, tenant of one other messuage or tenement, and 20 acres of land, meadow and pasture with the appurtenances thereto belonging, to *W. Durham* tenant of one other messuage or tenement, and 12 acres of land, meadow and pasture thereto belonging, to *T. Durrant*, tenant of one other messuage or tenement, and 5 acres of land, meadow and pasture with the appurtenances thereto belonging, to *J. Thomas*, tenant of one other messuage or tenement, and 10 acres of land, meadow and pasture with the appurtenances thereto belonging, to *W. Alner*, tenant of another messuage or tenement, and 70 acres of land, meadow and pasture with the appurtenances thereto belonging, to *M. Wheeler*, widow, tenant of one other messuage or tenement, and 16 acres of land, meadow and pasture with the appurtenances thereto belonging, to *J. Mannell*, tenant of one other messuage or tenement, and 16 acres of land, meadow and pasture with the appurtenances thereto belonging, to *G. Shering*, tenant of one cottage and half an acre of land thereto belonging, to *Pelham*, widow, tenant of one messuage or tenement, and 70 acres of land, meadow and pasture with the appurtenances thereto belonging, to *P. Mover*, tenant

of one other messuage or tenement, and three acres of land, meadow and pasture with the appurtenances thereto belonging, to *C. Bills*, tenant of one other messuage or tenement, and 4 acres of land, meadow and pasture with the appurtenances thereto belonging; all and singular which said lands and tenements last mentioned are in the manor of *Blaxworth* aforesaid, and situate, lying and being within the parish of *Blaxworth* aforesaid, of which *George Savage*, knt. in the writ aforesaid named, on the day of the rendition of the judgment in the said writ specified, and after, was seised in his demesne as of fee, that they and every of them should be before the said lord the king at the day and place in the said writ contained, to shew, do and receive as that writ commands and requires; and he farther certifies to the same lord the king, that there are not, nor is, any other tenants or tenant of any other lands or tenements of which the said *George Savage* on the said day of the rendition of the judgment aforesaid, or ever after, was seised in his demesne as of fee in his bailiwick, to whom he could give notice: and hereupon the said *John Adams* produces here in court the letters of administration aforesaid to the said *Sarah* whereby it sufficiently appears to the court here, that he the said *John Adams* is administrator, and thereof hath the administration, &c. And the same *John Adams* prays execution thereof against the said *Daniel Sadler* and *Philippa* his wife, *Philip Strickland*, *Jehonadab Savage*, *William Savage*, *Peter Hayward*, *James Dewey*, *Simon Hadderley*, *Joseph Jefferies*, *Mary Alner*, widow, *Thomas Laming*, *Nathaniel Fry*, *William Durham*, *Thomas Durrant*, *John Thomas*, *William Alner*, *Margaret Wheeler*, widow, *Joseph Mannel*, *George Sheering*, *Pelham*, widow, *Peter Maver* and *Christopher Billis*, for the debt and damages aforesaid, on the lands and tenements aforesaid to be levied, to be adjudged to him, &c.

[400]

And the said *Daniel Sadler* and *Philippa* his wife, *Philip Strickland*, *Jehonadab Savage*, *Peter Hayward*, *James Dewey*, *Simon Hadderley*, *Joseph Jefferies*, *Mary Alner*, widow, *Thomas Laming*, *Nathaniel Fry*, *William Durham*, *Thomas Durrant*, *John Thomas*, *William Alner*, *Margaret Wheeler*, widow, *Joseph Mannell*, *George Sheering*, *Pelham*, widow, *Peter Maver*, and *Christopher Billis*, on the same Friday next after the octave of *St. Martin* being solemnly called by *Peter Templeman* their attorney come and say, that the said *John Adams* ought not to have his execution against them for the debt and damages aforesaid on the manor, messuages, cottage, lands and tenements aforesaid, in the return of the said writ of *scire facias* mentioned, whereof they are returned tenants, because they say, that the said *George Savage*, knt. in the writ aforesaid of *scire facias* mentioned, or any other person or persons to the use of him the said *George Savage* and his heirs at the time of the rendition of the judgment aforesaid in the same writ above-mentioned, or ever after, was not, nor were seised of the same manor, messuages, cottage,

Plea, that the defendant had nothing in the land at the time of the judgment.

Scire Facias.

cottage, lands and tenements, or of any parcel thereof, in his demesne as of fee: and this they are ready to verify: wherefore they pray judgment if the said *John Adams* ought to have his execution against them for the debt and damages aforesaid on the manor, messuages, cottage, lands and tenements aforesaid, &c.

Repl' that he
was seised in fee.

And the said *John Adams* says, that he by any thing by the said *Daniel Sadler* and *Philippa* his wife, *Philip Strickland*, *Jehonadab Savage*, *William Savage*, *Peter Haward*, *James Dewey*, *Simon Hadderley*, *Joseph Jefferies*, *Mary Alner*, widow, *Thomas Laming*, *Nathaniel Fry*, *William Durham*, *Thomas Durrant*, *John Thomas*, *William Alner*, *Margaret Wheeler*, widow, *Joseph Mannell*, *George Sheering*, *Pelham*, widow, *Peter Maver* and *Christopher Billis* before alledged, ought not to be delayed from having his execution aforesaid against them for the debt and damages aforesaid on the manor, messuages, cottage, lands and tenements aforesaid in the said return of the writ of *scire facias* aforesaid mentioned, whereof they are returned tenants, because he says, that the said *George Savage*, knt. on the said day of the rendition of the judgment aforesaid in the writ aforesaid above-mentioned, and long after, was seised of the same manor, messuages, cottage, lands and tenements, in his demesne as of fee, as by the return of the writ aforesaid is above supposed: and this he prays may be inquired of by the country: and the said *Daniel Sadler* and *Philippa* his wife, *Philip Strickland*, *Jehonadab Savage*, *William Savage*, *Peter Hayward*, *James Dewey*, *Simon Hadderley*, *Joseph Jefferies*, *Mary Alner*, widow, *Thomas Laming*, *Nathaniel Fry*, *William Durham*, *Thomas Durrant*, *John Thomas*, *William Alner*, *Margaret Wheeler*, widow, *Joseph Mannell*, *George Sheering*, *Pelham*, widow, *Peter Maver* and *Christopher Billis*, thereof likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Thursday* next after the octave of the purification of the blessed virgin *Mary*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

[401] *Pleas before the Lord the King at Westminster of Hilary Term in the 13th Year of the Reign of the Lord William the Third, now King of England, &c.*

The Jurata.

Dorset, **T**HE jury between *John Adams* by *W. Underwood* to wit. his attorney, plaintiff, and *Daniel Sadler* and *Philippa* his wife, *Philip Strickland*, &c. and *Christopher Billis*, in a plea of debt, whereon a *scire facias*, &c. is respited before the lord the king at *Westminster* until *Wednesday* next after 15 days of *Easter*, unless the justices of the lord the king, assigned to take assises in the county aforesaid, shall first come on *Thursday* the 12th day of *March* to *Dorchester*, by the form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have the bodies, &c. The same day is given to the parties aforesaid there, &c.

Et. And be it known, that the writ of the said lord the king thereof on *Thursday* the 12th day of *February* in this same term before the lord the king at *Westminster* is delivered to the undersheriff of the county aforesaid, in form of law to be executed at his peril, Et.

Afterwards the day and place within contained before T. *The postea.*
Trevor, knt. chief justice of the lady *Anne*, now queen of *England*, Et. of the bench, and late chief justice of the lord *William* the Third, late king of *England*, Et. of the bench, and *R. Tracy*, esq. one of the barons of the exchequer of the said lady the now queen, and late one of the barons of the exchequer of the said lord the late king, justices of the said lady the queen assigned to take assises in the county of *Dorset*, by the form of the statute, Et. comes as well the within named *John Adams*, the natural son of the within written *Sarah Adams*, and administrator as aforesaid of the goods, rights and credits which belonged to the said *Sarah Adams*, as the within written *D. Sadler* and *Philippa* his wife, *P. Strickland*, Et. and *C. Billis*, by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called, some of them, to wit, *D. Banks*, *J. Young*, *B. Hayne*, *J. Daswood*, *W. Muston*, *B. Nightingale*, *G. Pope* and *T. Shitler* come, and on that jury are sworn; and because the rest of the jurors of the same jury have not appeared, therefore others from the by-standers by the sheriff of the county aforesaid hereto elected, at the request of the said *J. Adams*, and by the command of the justices aforesaid, are added anew, whose names to the panel within written are annexed, according to the form of the statute in such case lately made and provided; and the jurors so added anew, to wit, *E. Taunton*, *S. Stevens*, *G. Lister* and *W. Daw*, being called likewise come, who to say the truth of the within contained, together with the other jurors aforesaid hereto first impanelled and sworn, being elected, tried and sworn, say on their oath, that before the said time of the rendition of the judgment aforesaid in the writ aforesaid above specified, to wit, on the 17th day of *November* in the year of the Lord 1657, *George Savagt*, esq; after and at the time of the rendition of the judgment aforesaid, *G. Savage*, knt. was seised in his demesne as of fee of and in the manor, messuages, cottage, lands and tenements with the appurtenances, in the return of the writ aforesaid above-mentioned; and being so thereof seised, he the said *G. Savage* afterwards, and before the said day of the rendition of the judgment aforesaid, to wit, on the 18th day of the same month of *November* in the year of the Lord 1657 above said, did make, seal, and as his deed deliver his certain indenture to the jurors aforesaid in evidence shewn, bearing date the same day and year last above said, and made between him the said *George Savage*, by the name of *George Savage*, the younger of *Blaxworth* in the county of *Dorset*, esq; son and heir of *William Savage*, late of *Blaxworth* aforesaid, esq; deceased, of the one part, and *M. Davis* and *G. Savage* the elder, by

Special verdict.

by the names of *M. Davis* of *Shafton* in the said county of *Dorset*, esq; and *G. Savage* the elder of *Blaxworth* aforesaid, esq; of the other part; the tenor of which said indenture follows in these words, to wit, this indenture made, &c. (*reciting the indenture to*) in witness whereof all the parties to these presents have to each part of these indentures set their hands and seals, the day and year first above-written: and the jurors aforesaid farther say on their oath, that the said several indentures were made and executed for and upon the several considerations in the same respectively mentioned, and that the several considerations in the same respectively mentioned were well and truly paid, done and performed, according to the agreement in the same between the parties thereto mentioned: and the jurors aforesaid farther say on their oath aforesaid, that the said *George Savage* the younger of *Blaxworth*, esq; in the indenture aforesaid above-named, and *George Savage*, knt. otherwise called *George Savage* of *Blaxworth* in the county of *Dorset*, esq; in the writ aforesaid above-named, is one and the same person, and not another nor different; and that the said manor, messuages, cottages, lands and tenements with the appurtenances, in the return of the writ aforesaid above-mentioned, and the said manor of *Blaxworth* in the indenture aforesaid mentioned, and also the messuages, cottages, lands and tenements with the appurtenances in the indenture aforesaid likewise mentioned to be situate and being in the parish of *Blaxworth* in the county of *Dorset*, are the same manor, messuages, cottages, lands and tenements with the appurtenances, and not other nor different: and the jurors aforesaid farther say on their oath aforesaid, that at the time of the making of the indenture aforesaid, the said *George Savage*, knt. had no issue male of his body begotten, but long before the rendition of the judgment aforesaid in the writ aforesaid above-mentioned, the said *George Savage*, knt. had issue male by him on the body of the said *Anne* his wife lawfully begotten, to wit, *William Savage* his first begotten son, *George Savage* his second son, and several other sons: and the jurors aforesaid farther on their oath say, that after the rendition of the judgment aforesaid in the writ aforesaid above-mentioned, the said *George Savage*, knt. the said *Anne* his wife, and the said *William Savage*, the first begotten son of the said *George Savage*, knt. died, and that the said *William Savage*, the son of the said *George Savage*, knt. left issue male of his body lawfully begotten, and that the said *George Savage*, the son of the said *George Savage*, knt. is yet surviving and in full life: but whether on the whole matter by the jurors aforesaid in form aforesaid found, the said *George Savage*, knt. on the said day of the rendition of the judgment aforesaid in the writ aforesaid above-mentioned, or ever after, was seised of the manor, messuages, cottages, lands and tenements aforesaid, in his demesne as of fee, as by the return of the writ aforesaid is above supposed, and the debt and damages aforesaid ought to be levied on those lands and tenements, and paid to the said *John*, according

[402]

ing to the force, form and effect of the recovery aforesaid, or not, the jurors aforesaid are intirely ignorant, and thereon pray the advice and consideration of the justices and court of the said lady the queen before the queen herself: and if upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, it shall appear to the justices and court of the said lady the queen before the queen herself, that the said *George Savage*, knt. on the day of the rendition of the judgment aforesaid in the writ aforesaid above-mentioned, or ever after, was seised of the manor, messuages, cottage, lands and tenements aforesaid, in his demesne as of fee, as by the return of the writ aforesaid is above supposed, and that the debt and damages aforesaid ought to be levied on those lands and tenements, and paid to the said *John*, according to the force, form and effect of the recovery aforesaid, then the same jurors say on their oath, that the said *George Savage*, knt. on the day of the rendition of the judgment aforesaid in the writ aforesaid above-mentioned, and long after, was seised of the manor, messuages, cottage, lands and tenements aforesaid, in his demesne as of fee, as by the return of the writ aforesaid is above supposed, and that the debt and damages aforesaid ought to be levied on those lands and tenements, and paid to the said *John*, according to the force, form and effect of the recovery aforesaid; and then they assess the damages of the said *John Adams*, by reason of the detention of the debt aforesaid, besides his costs and charges by him about his suit in this behalf expended, to 2*d*. and for those costs and charges to 40*s*. But if upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, it shall appear to the justices and court of the said lady the queen before the queen herself, that the said *George Savage*, knt. on the day of the rendition of the judgment aforesaid in the writ aforesaid above-mentioned, or ever after, was not seised of the manor, messuages, cottage, lands and tenements aforesaid, in his demesne as of fee, as by the return of the writ aforesaid is above supposed, and that the debt and damages aforesaid ought not to be levied on those lands and tenements, and paid to the said *John Adams*; then the same jurors say on their oath aforesaid, that the said *George Savage*, knt. on the said day of the rendition of the judgment aforesaid in the writ aforesaid above-mentioned, or ever after, was not seised of the manor, messuages, cottage, lands and tenements aforesaid, in his demesne as of fee, and that the debt and damages aforesaid ought not to be levied on those lands and tenements, and paid to the said *John*, as the said *Daniel Sadler* and *Philippa* his wife, *Philip Strickland*, *Jebonadab Savage*, *William Savage*, *P. Hayward*, *J. Dewey*, *S. Hadderley*, *J. Jefferies*, *M. Alner*, *T. Laming*, *F. Fry*, *W. Durham*, *Tho. Durrant*, *J. Thomas*, *W. Alner*, *M. Wheeler*, *J. Mannel*, *G. Sheering*, *Pelham*, *P. Mavor* and *Christopher Billis*, have within by pleading thereon alledged: but because the court, &c.

Salk. 607.
Mod. Caf. 134,
199.

Scire Facias.

Burr and Atwood.

Scire facias
to hear errors
on a writ of
error on a judg-
ment in a *scire*
facias in an in-
ferior court.

ANNE, &c. To the sheriff of *Kent*, greeting: whereas in the record and proceedings, and also in the adjudication of execution on a precept of *scire facias* issuing out of the court of the lord *William* the Third, late king of *England*, of the town and parish of *Maidstone*, against *James Burr*, the bail of *James Drewett*, in a plaint of debt of 120*l.* levied against the said *J. Drewett* by *J. Atwood* in the court of the said late king and the lady *Mary* late queen of *England*, of the town and parish of *Maidstone* aforesaid, before the then mayor of the town and parish of *Maidstone* aforesaid, upon which said plaint judgment in the said court of the said late king and of the said late queen of the town and parish of *Maidstone* aforesaid is given against the said *James Drewett* for the said 120*l.* debt, and 58*s.* 2*d.* for damages by reason of the detention of that debt, as it is said, a manifest error hath happened, to the great damage of the said *James Burr*; as by his complaint we have understood, the record and proceedings of which said judgment we have lately caused to be brought before us for certain causes of error, as it appears to us on record, and the same *James Burr* hath thereon duly assigned errors on record, as by the inspection of the record thereof appears likewise to us: therefore we command you, that by good and lawful men of your bailiwick you give notice to the said *John Atwood*, that he be before us from the day of *St. Michael* in three weeks wheresoever, &c. to hear the record and proceedings aforesaid, if he shall think fit, and farther to do and receive what our same court before us shall then and there consider concerning him in this behalf; and have there then the names of those by whom you shall give him notice, and this writ. Witness *J. Holt*, knt. at *Westminster* 16th day of *June* in the second year of our reign.

Carr and Oldys.

Easter 5 Geo. Roll. 378.

The entry of a
scire facias
against the bail
in C. B.

Otherwise, as it appears in *Easter* term in the 4th year of king *George*, Roll. 380, it is contained thus: *Middlesex*, to wit, the sheriff was commanded, whereas *Joseph Gurney*, late of *Lower Shadwell* in the county aforesaid, glazier, and *John Oldys*, late of *Salisbury-street* in *Redriffe* in the county of *Surry*, sail-maker, lately in the court of the lord the king here, to wit, in *Trinity* term in the third year of the reign of the said lord the king, before *Peter King*, knt. and his companions, justices of the said lord the king of the bench here at *Westminster*, acknowledged, and each of them acknowledged, they owed to *Mary Carr* the sum of 30*l.* which said sum of 30*l.* the same *Joseph* and *John* for themselves and their heirs consented and granted, and each of them for himself and his heirs consented and granted, should

should be made of their and each of their lands and chattels, and levied to the use and behoof of the same *Martha*: and whereas *Robert Miles*, late of the parish of *Stepney* in the county of *Middlesex* aforesaid, ropemaker, in the same term before the same justices of the said lord the king in the court of the said lord the king here acknowledged he owed to the same *Martha* the sum of 60 *l.* which said sum of 60 *l.* the same *Robert* for himself and his heirs consented and granted should be made of his lands and chattels, and levied to the use and behoof of the same *Martha*, on this condition, that if it should happen that judgment should be given in the same court of the said lord the king here for the said *Martha* against the said *Robert* in a certain plea of trespass on the case to the damage of 30 *l.* by the said *Martha* against the said *Robert* in the same court of the said lord the king here prosecuted, then the same *Robert* all the damages, which to the said *Martha* against the said *Robert* in the same court of the said lord the king here in the plea aforesaid should be adjudged, would satisfy, or his body in execution of such judgment to the prison of the *Fleet* would render; and altho' the said *Martha* in *Michaelmas* term in the 4th year of the reign of the said lord the now king, &c. before the said *Peter King*, knt. and his companions, justices of the said lord the king of the bench here, at *Westminster* aforesaid did recover against the said *Robert* 33 *l.* which were adjudged to the same *Martha*, in the same court of the said lord the king here, for her damages which she had by reason of the trespass on the case aforesaid, whereof he is convicted, as by the record and proceedings thereof remaining in the same court of the said lord the king here manifestly appears: nevertheless the said *Robert* the damages aforesaid to the said *Martha* hath not satisfied, nor his body in execution of such judgment to the prison of the *Fleet* render'd, according to the form of the recognisance aforesaid, as by the suggestion of the said *Martha* the king had understood; and because, &c. that by good, &c. he should give notice to the said *Joseph*, *John* and *Robert*, that they should be here at this day, to wit, from the day of *Easter* in 15 days, to shew if, &c. to wit, the said *Joseph*, why the said 30 *l.* by him in form aforesaid acknowledged of his lands and chattels, and the said *John*, why the said 30 *l.* by him in form aforesaid acknowledged of his lands and chattels, and the said *Robert*, why the 60 *l.* by him in form aforesaid acknowledged of his lands and chattels, ought not to be made, and to the use and behoof of the said *Martha* levied, according to the form of the recognisance aforesaid, if, &c. And now here on this day comes the said *Martha* by *Richard Cox* her attorney, and offers herself the fourth day against the said *Joseph*, *John* and *Robert* in the said plea; and they being solemnly called do not come; and the sheriff now returns, that the said *Joseph*, *John* and *Robert* have nothing, nor hath any of them any thing, &c. neither are they found, nor is any of them found, &c. Therefore as before the sheriff is commanded, that by good, &c. he give notice to the

[404]

Scire facias.

The return.]

Alias awarded.

The return.

Execution
prayed.

Judgment
against two of
the bail.

Plea by the
third, that there
is no such
record.

Repl. that there
is such record.

said *Joseph*, *John* and *Robert*, that they be here from the day of *Easter* in five weeks, to shew in form aforesaid, &c. On which day here comes the said *Martha* by her attorney aforesaid; and the said *John* by *Simon Lowth* his attorney likewise comes; and the said *Joseph* and *Robert*, altho' solemnly called, do not come; and the sheriff as before now returns, that the said *Joseph*, *John* and *Robert* have nothing, nor hath any of them any thing; &c. neither are they found, nor is any of them found, &c. And hereupon the said *Martha* prays execution against the said *Joseph*, *John* and *Robert*, to wit, against the said *Joseph* for the said 30 *l.* by him in form aforesaid acknowledged, and against the said *John* for the said 30 *l.* by him in form aforesaid acknowledged, and also against the said *Robert* for the said 60 *l.* by him in form aforesaid acknowledged, according to the form of the recognisance aforesaid, to be adjudged to her, &c. Therefore it is considered, that the said *Martha* have execution against the said *Joseph* and *Robert*, to wit, against the said *Joseph* for the said 30 *l.* by him in form aforesaid acknowledged, and against the said *Robert* for the said 60 *l.* by him in form aforesaid acknowledged, by the default of them the said *Joseph* and *Robert*, &c.

And the said *John* by his attorney aforesaid prays leave to imparl thereto here until on the morrow of the holy *Trinity*; and he hath, &c. The same day is given to the said *Martha* here, &c. On which day comes here as well the said *Martha* by her attorney aforesaid, as the said *John* by his attorney aforesaid: and the said *John* farther prays leave to imparl thereto here until on the octave of *St. Hilary*; and he hath, &c. The same day is given to the said *Martha* here, &c. On which day comes here as well the said *Martha* by her attorney aforesaid, as the said *John* by his attorney aforesaid: and the said *John* farther prays leave to imparl thereto here until from the day of *Easter* in 15 days; and he hath, &c. The same day is given to the said *Martha* here, &c. On which day comes here as well the said *Martha* by her attorney aforesaid, as the said *John* by his attorney aforesaid: and the said *John* says, that the said *Martha* ought not to have her execution against him for the said 30 *l.* by virtue of the recognisance aforesaid, because he says, that there is no such record of the recovery against the said *Robert* of the damages aforesaid in the declaration aforesaid above-mentioned, as the said *Martha* hath above by declaring alledged: and this he is ready to verify: wherefore he prays judgment if the said *Martha* ought to have her execution against him the said *John* for the said 30 *l.* by virtue of the recognisance aforesaid, &c.

And the said *M. Carr* says, that she by any thing by the said *J. Oldys* above in pleading alledgedought not to be precluded from having her execution aforesaid against him the said *John* for the said 30 *l.* by virtue of the recognisance aforesaid, because she says, that in the said court of the said lord the king here before the said *Peter King*, knt. and his companions, justices of the said lord the king, there is such record of the recovery against the said

faid *Robert* of the damages aforesaid, as by the said writ of *scire facias* is above supposed, as by the record thereof, among the records of the same court of the said *Michaelmas* term in the 4th year aforesaid, roll, 505, in the same court remaining, is manifest and appears: and this the same *Martha* is ready to verify by that record: and she prays that that term and roll by the court of the said lord the king here may be seen and inspected, &c. and because she hath not now that record ready here in court, the said *M. Carr* is order'd to have that record by her searched out on the morrow of the ascension of our Lord: the same day is given to the said *John Oldys* here, &c. On which day here comes as well the said *Martha* as the said *John Oldys* by their attornies aforesaid; and upon this the term and record aforesaid being seen and inspected, and by the justices here examined, it sufficiently appears to the same justices here, that in the said court of the said lord the king here before the said *P. King*, knt. and his companions, justices of the said lord the king, there is such record of the recovery against the said *R. Miles* of the damages aforesaid, as by the said writ of *sci. fac.* is above supposed: therefore it is considered, that the said *M.* have execution against the said *J. Oldys* for the said 30*l.* by virtue of the recognisance aforesaid: and it is farther considered, that the said *M.* do recover against the said *J. O.* 90*s.* to the same *M.* by her assent, by the court here adjudged for her costs and charges which she hath had by reason of the delay of the execution of the judgment aforesaid, according to the form of the statute thereof lately made and provided.

Judgment for
the plaintiff.

[405]

Poulson against *Francia*.

England, **T**HE lady the queen hath sent to the sheriffs of London her writ close in these words, to wit, *Anne* by the grace of God, of *Great Britain, France* and *Ireland*, queen, defender of the faith, &c. To the sheriffs of *London*, greeting: whereas *Gilbert Poulson*, gent. lately in our court before *Thomas* lord *Trevor*, baron of *Bromham*, and his companions, our justices of the bench, by our writ, and by the judgment of the same court, hath recovered against *Simon Francia* late of *London* aforesaid, merchant, otherwise called *Simon Francia* of *London*, merchant, 1000*l.* debt, and also 15*l.* 10*s.* for his costs and charges by him about his suit in that behalf sustained, whereof the said *Simon* is convicted, as by the inspection of the record and proceedings thereof which we have caused to be brought before us by virtue of our writ to correct error, prosecuted by the said *Simon* of and upon the premisses, and which in our court before us being in all things affirmed now remaining appears to us on record, as also 14*l.* which to the same *Gilbert* in our same court before us, according to the form of the statute in such case made and provided, were adjudged for his damages, costs and charges, which he hath sustained by reason of the delay of the execution

Scire facias for
an administra-
trix on a judg-
ment in debt in
C. B. assumed in
K. B.

Scire Facias.

of the judgment aforesaid, on pretence of prosecuting our said writ to correct error, by the said *Simon* of and upon the premises as aforesaid prosecuted, and whereof the said *Simon* is also convicted, as it likewise appears to us on record: and whereas the said *Gilbert Poulson* afterwards, to wit, on the first day of *March* in the 12th year of our reign at *London* aforesaid died intestate, the debt and damages, costs and charges aforesaid, or any part thereof, being not paid; after whose death, to wit, on the fifth day of *March* in the 12th year of our reign aforesaid, at *London* aforesaid, administration of all and singular the goods, rights and credits which belonged to the said *Gilbert Poulson* at the time of his death, by *Thomas* by divine providence archbishop of *Canterbury*, primate and metropolitan of all *England*, to whom the commission of the administration aforesaid did of right belong, to *Elizabeth Poulson*, the widow and relict of the said *Gilbert Poulson*, in due form of law was committed: and now on the behalf of the said *Elizabeth* in our court before us we have understood, that altho' the judgment aforesaid is in form aforesaid given and affirmed, execution nevertheless for the debt, damages, costs and charges aforesaid, yet remains to be made to her: wherefore the said *Elizabeth* hath besought us to grant her her proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *Simon Francia*, that he be before us from the day of *Easter* in five weeks wheresoever we shall then be in *England*, to shew if he hath or can say any thing, why the said *Elizabeth* ought not to have her execution against him for the debt, damages, costs and charges aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our same court before us shall then and there consider concerning him in this behalf; and have there then the names of those by whom you shall give him notice, and this writ. Witness *T. P. knt.* at *Westminster* 14th day of *April* in the 13th year of our reign.

Holt. Ventris.

The return.

On which day before the lady the queen at *Westminster* comes the said *Elizabeth* in her proper person; and the sheriffs of *London*, to wit, *T. F. knt.* and *J. S. knt.* on that day return, that they by virtue of the writ aforesaid to them directed by *P. W.* and *J. D.* good and lawful men of their bailiwick, had given notice to the said *Simon* that he be before the lady the queen at the day and place aforesaid, to shew, &c. according to the tenor of the writ aforesaid; and the said *Simon* on the same day being solemnly called in his proper person likewise comes, and hereupon the said *Elizabeth* prays execution against the said *Simon* for the debt, damages, costs and charges aforesaid, to be adjudged to her, &c. And the said *Simon* says, that the said *Elizabeth* ought not to have her execution against him for the debt, damages, costs

Plea, that the administration was fraudulently obtained.

costs and charges aforesaid, because he says, that the said administration of all and singular the goods, rights and credits, which belonged to the said *Gilbert Poulsen* at the time of his death, was by the said *Elizabeth* falsely and fraudulently obtained, to wit, at *Westminster* in the county of *Middlesex*: and this he is ready to verify: wherefore he prays judgment if the said *Elizabeth* ought to have her execution aforesaid against him the said *Simon*, &c.

And the said *Elizabeth* says, that the plea aforesaid by the said *Simon* in bar of the execution of her the said *Elizabeth* to be had for the debt, damages, costs and charges aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to preclude her the said *Elizabeth* from having her execution aforesaid against the said *Simon*; to which said plea, in manner and form aforesaid pleaded, the same *Elizabeth* hath no necessity, nor is by the law of the land obliged, to answer: and this she is ready to verify: wherefore the same *Elizabeth* prays judgment, and her execution for the debt, damages, costs and charges aforesaid, to be adjudged to her, &c.

[406]

Demurrer.

And the said *Simon* says, that the plea aforesaid by him the said *Simon* in manner and form aforesaid pleaded, and the matter in the same contained, are good and sufficient in law to preclude her the said *E.* from having her execution against him the said *Simon* for the debt, damages, costs and charges aforesaid; which said plea, and the matter in the same contained, the same *Simon* is ready to verify and prove, as the court, &c. And because the said *E.* doth not answer to that plea, nor hitherto in any wise deny it, the same *Simon* as before prays judgment, and that the said *E.* may be precluded from having execution against him the said *Simon*: but because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premises, day therefore is given to parties aforesaid before the lady the queen until to hear their judgment of and upon the premises, because the court of the said lady the queen now here thereof not yet, &c.

Joinder.

Middlesex, **T**H E sheriff was commanded: whereas *W. J.* late to wit. of and *W. G.* late of lately in the court of the lord the now king here, to wit, in *Michaelmas* term in the 4th year of the reign of the said lord the king, before *P. K.* knt. and his companions, justices of the said lord the king of the bench here, to wit, at *Westminster*, have acknowledged, and each of them hath acknowledged, to owe to *T. T.* the sum of 100 *l.* which said sum of 100 *l.* the same *W. J.* and *W. G.* for themselves and their heirs have consented and granted, and each of them for himself and his heirs hath consented and granted, shall be made of their and each of their lands and chattels, and levied to the use and behoof of the same *T. Taylor*: and whereas *T. C.* late of *London*, merchant, in the same term before the same justices of the said lord the king in the same court of the said lord the king of the bench here, to wit, at *Westminster* aforesaid,

The entry of a *scire facias* against the bail on a recognisance on a *clausum fregit*.

hath acknowledged, that he owes to the same *T. T.* the sum of 200 *l.* which said sum of 200 *l.* the same *T. C.* for himself and his heirs hath consented and granted shall be made of his lands and chattels, and levied to the use and behoof of the same *T. Taylor*, on this condition, that if it should happen that judgment should be given in the same court of the said lord the king of the bench here for the said *T. T.* against the said *T. C.* in a certain plea of trespass on the case, to the damage of 100 *l.* by the said *T. T.* against the said *T. C.* in the same court of the said lord the king of the bench here prosecuted, then the same *T. C.* all the damages, which to the said *T. T.* against the said *T. C.* in the same court of the said lord the king of the bench here in the said plea should be adjudged, should satisfy, or his body on that account to the prison of the *Fleet* should render; and altho' the said *T. T.* in *Trinity* term in the 4th year of the reign of the said lord the now king before the said *P. King*, knt. and his companions, justices of the said lord the king of the bench here, to wit, at *Weyminster* afore said, by the consideration of the same court hath recovered against the said *T. C.* 93 *l.* 10 *s.* which to the same *T. T.* in the same court of the said lord the king of the bench here were adjudged for his damages which he hath sustained by reason of the trespass on the case afore said, whereof he is convicted, as by the record and proceedings thereof, which the said lord the king hath lately for certain reasons caused to be brought into the court of the said lord the king before the king himself, and which in the same court of the said lord the king before the king himself in all things affirmed now remain, appears on record: nevertheless the said *T. C.* the damages afore said to the said *T. T.* hath not satisfied, nor his body on that account to the prison of the *Fleet* render'd, as the king hath by the suggestion of the said *T. T.* understood; and because, &c. that by good, &c. he should give notice to the said *W.* and *W.* and *T. C.* that they should be here on this day, to wit, on the octave of the purification of the blessed *Mary*, to shew if any thing, &c. to wit, to the said *William*, why the said 100 *l.* by him in form afore said acknowledged, of his lands and chattels, to the said *W. G.* why the said 100 *l.* by him in form afore said acknowledged, of his lands and chattels, and to the said *T. C.* why the said 200 *l.* by him in form afore said acknowledged, of his lands and chattels, ought not to be made, and to the use and behoof of the said *T. T.* levied, according to the form of the recognisance afore said, if, &c. And now here on this day comes the said *T. T.* by *R. Bicknell* his attorney, and offers himself the 4th day against the said *W. J. W. G.* and *T. C.* in the plea afore said; and they being solemnly called do not come; and the sheriff, to wit, *John Eyles*, bart. and *John Tash*, knt. now return, that they have nothing, &c. nor are found, &c. Therefore as before the sheriff is commanded, that by good, &c. he give notice to the said *W. J. W. G.* and *T. C.* that they should be here on this day, to wit, from the day of *Easter* in 15 days, to shew in form afore said,

said, &c. if, &c. And now on this day comes the said T. T. by his attorney aforesaid, and offers himself the 4th day against the said W. J. W. G. and T. C. in the plea aforesaid; and one of them, to wit, the said T. C. altho' solemnly called on the 4th day of plea doth not come, but hath made default; and the said W. J. and W. G. by A. B. their attorney come; and the sheriff, to wit, J. Eyles, bart. and J. Tasb, knt. as before now return, that they have nothing, &c. nor are found, &c. And upon this the said T. T. prays execution against the said T. C. for the said 200 l. by him in form aforesaid acknowledged, to be adjudged to him by the default of him the said T. C. &c. Therefore it is considered, that the said T. T. may have execution against the said T. C. for the said 200 l. by him in form aforesaid acknowledged by the default of him the said T. C. &c. And hereupon the said T. T. prays execution against the said W. J. for the said 100 l. by him in form aforesaid acknowledged, and against the said W. G. for the said 100 l. by him in form aforesaid acknowledged, to be adjudged to him, &c.

The principal makes default.

[407]

The bail appear.

And the said W. J. and W. G. by E. Clive their attorney come and pray oyer of the said writs of *scire facias* aforesaid, and to them they are read in these words, to wit, *George* by the grace of God, &c. To the sheriff of *Middlesex*, greeting: whereas W. J. late of and W. G. late of *London*, gent. lately in our court, to wit, in *Michaelmas* term in the 4th year of our reign, before P. K. knt. and his companions, our justices of the bench, have acknowledged, and each of them hath acknowledged, to owe to T. T. the sum of 100 l. which said sum of 100 l. the same W. J. and W. G. for themselves and their heirs have consented and granted, and each of them for himself and his heirs hath consented and granted, shall be made of their and each of their lands and chattels, and to the use and behoof of the same T. T. levied: and whereas T. C. late of *London*, merchant, in the same term before our same justices in our same court hath acknowledged to owe to the same T. T. the sum of 200 l. which said sum of 200 l. the same T. C. for himself and his heirs hath consented and granted shall be made of his lands and chattels, and to the use and behoof of the same T. T. levied, upon this condition, that if it should happen that judgment in our same court should be given for the said T. T. against the said T. C. in a plea of trespass on the case, to the damage of 100 l. by the said T. T. against the said T. C. in our same court prosecuted, then the same T. C. all the damages, which to the said T. T. against the said T. C. in our same court in the said plea should be adjudged, should satisfy, or his body on that account to the prison of the *Fleet* should render; and altho' the said T. T. in *Trinity* term in the 4th year of our reign, before the said P. K. knt. and his companions, our justices of the bench aforesaid, at *Westminster*, by the consideration of the same court did recover against the said T. C. 93 l. 10 s. which to the same T. T. in the same court of the said lord the

Oyer of the writs of *scire facias*.

The condition.

Judgment against the principal.

Scire Facias.

king of the bench here were adjudged for his damages which he had sustained by reason of the trespass on the case aforesaid, and whereof he is convicted, as by the record and proceedings thereof, which into the court of the said lord the king before the king himself the said lord the king for certain reasons hath caused to be brought, and which in the same court of the said lord the king before the king himself in all things affirmed now remain, appears on record: nevertheless the said *T. C.* the damages aforesaid to the said *T. T.* hath not satisfied, nor his body on that account to the prison of the *Fleet* render'd, as by the suggestion of the said *T. T.* we have understood; and because we are willing that those things, which are in our court before our justices at *Westminster* lawfully transacted and acknowledged, should be carried into due execution, we command you, that by good and lawful men of your bailiwick you give notice to the said *William*, and *W.* and *T. C.* that they be before our justices at *Westminster* on the octave of the purification of the blessed *Mary*, to shew if they have or can say any thing for themselves, to wit, to the said *W. J.* why the said 100 *l.* by him in form aforesaid acknowledged, of his lands and chattels, and to the said *W. G.* why the said 100 *l.* by him in form aforesaid acknowledged, of his lands and chattels, and to the said *T. C.* why the 200 *l.* by him in form aforesaid acknowledged, of his lands and chattels, ought not to be made, and to the use and behoof of the said *T. T.* levied, according to the form of the recognisance aforesaid, if they shall think fit; and have there the names of those by whom you shall give them notice, and this writ. Witness *P. K.* knt. at *Westminster*, 23d *January* in the 6th year of our reign. *George*, (as in the other unto) we commanded you, as we have before commanded you, returnable from the day of *Easter* in 15 days, and tested 12 *February* in the 6th year: they pray likewise oyer of the recognisance aforesaid in the said writs of *scire facias* specified; and to them it is read in these words, to wit, *Mich.* 4th of *George*, *London*, to wit, the sheriffs were commanded, that they should take *T. C.* late of *London*, merchant, if, &c. and safely, &c. so that they might have his body here on this day, to wit, on the morrow of *All Souls*, to answer to *T. T.* in a plea, why with force and arms he broke the close of him the said *T. T.* at *London*, and other outrages, &c. to the great damage, &c. and against the peace, &c. and also in a certain plea of trespass on the case on a promise, to the damage of the said *T. T.* 100 *l.* And now here on this day come *W. J.* of *London* and *W. G.* of *London*, gent. in their proper persons, before *P. K.* knt. and his companions, justices of the bench, and have acknowledged, and each of them hath acknowledged, to owe to the said *T. T.* 100 *l.* which said sum of 100 *l.* the same *William* and *William* for themselves and their heirs have consented and granted, and each of them for himself and his heirs hath consented and granted, shall be made of their and each of their lands and chattels, and to the use and behoof of the same

Oyer of the recognisance.

[408]

same *T. T.* levied: and also now here on this day comes the said *Thomas C.* in his proper person before the same justices, and hath acknowledged to owe to the said *T. T.* the sum of 200 *l.* which said sum of 200 *l.* the same *T. C.* for himself and his heirs hath consented and granted shall be made of his lands and chattels, and to the use and behoof of the same *T. T.* levied, upon this condition, that if it shall happen that judgment in the same court here shall be given in the said plea of trespass on the case for the said *T. T.* against the said *T. C.* then the same *T. C.* all the damages, which to the said *T. T.* in the same court here in the said plea of trespass on the case shall be adjudged, shall satisfy, or his body in execution of the judgment to the prison of the *Fleet* shall render, &c. They also pray oyer of the original writ, and of the judgment thereon given in the said writs of *scire facias* specified, and to them they are read in these words, to wit, *George* by the grace of God, &c. To the sheriffs of *London*, greeting: if *T. T.* shall make you secure to prosecute his suit, then put by surety and safe pledges *T. C.* late of *London*, merchant, that he be before our justices at *Westminster* from the day of *Easter* in 15 days, to shew, why whereas the said *T. C.* after the first day of *May* in the year of the Lord 1705, to wit, on the 20th day of *March* in the year of the Lord 1713, at *London* aforesaid in the parish of *St. Mary le Bow*, in the ward of *Cheape*, made his certain note in writing, called a promissory note, with his own proper hand thereto subscribed, bearing date the same day and year last mentioned, and that note to the same *T. T.* then and there delivered; by which said note the said *T. C.* promised to pay to the said *T. T.* or bearer, the sum of 74 *l.* 10 *s.* four months after the date of that note, for value received; by reason whereof, and by force of the statute in such case lately made and provided, the same *T. C.* became liable to pay to the said *T. T.* the same sum of money, according to the tenor of the note aforesaid; and being so liable, the said *T. C.* in consideration thereof afterwards, the same day and year last mentioned, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *T. T.* then and there faithfully promised to pay him the same sum of money, according to the tenor of the note aforesaid: and whereas also the said *T. C.* afterwards, to wit, on the said 20th day of *March* in the year of the Lord 1713, at *London* aforesaid in the parish and ward aforesaid, was indebted to the said *T. T.* in the sum of 100 *l.* of lawful money of *Great Britain*, for divers goods, wares and merchandizes, to the said *T. C.* by the said *T. T.* at the special instance and request of him the said *T. C.* before then sold and delivered; and being so therein indebted, the said *T. C.* in consideration thereof afterwards, to wit, on the said 20th day of *March* in the year of the Lord 1713 aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the same *T. T.* then and there faithfully promised to pay to the same *T. T.* the said 100 *l.* when he should be thereto after required:

Oyer of the original and judgment against the principal.

required: and whereas also the said *T. C.* afterwards, to wit, on the said 20th day of *March* in the year of the Lord 1713 above-said, at *London* afore-said in the parish and ward afore-said, in consideration that the same *T. T.* at the like instance and request of him the said *T. C.* had sold and delivered to the said *T. C.* other goods, wares and merchandizes, assumed upon himself, and to the same *Thomas C.* then and there faithfully promised to pay to the same *T. T.* such sums of money, as the goods, wares and merchandizes last mentioned, at the time of the sale and delivery of the same were reasonably worth: and the said *T. T.* in fact says, that the goods, wares and merchandizes last mentioned, at the time of the sale and delivery of the same were reasonably worth other 100 *l.* of like lawful money, to wit, at *London* afore-said in the parish and ward afore-said, whereof the same *T. C.* from the said *T. T.* then and there had notice: nevertheless the said *T. C.* his several promises and assumptions afore-said in form afore-said made not regarding, but contriving and fraudulently intending the same *T. T.* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same *T. T.* altho' to do it the said *T. C.* on the 21st day of *September* in the year of the Lord 1714, at *London* afore-said in the parish and ward afore-said, by the same *T. T.* was required, hath not paid, or in any wise for the same hitherto contented, but hath altogether refused, and yet doth refuse, to pay him the same, to the damage of the said *T. T.* 100 *l.* as it is said; and have there the names of the pledges, and this writ. Witness ourself at *Westminster* 8th day of *April* in the 5th year of our reign. Pleas inrolled at *Westminster* before *Peter King*, knt. and his companions, justices of the lord the king of the bench of *Easter* term in the 4th year of the reign of the lord *George*, by the grace of God of *Great Britain, France* and *Ireland* king, defender of the faith, &c. roll 363. *London*, to wit, *T. C.* late of *London*, merchant, was attached to answer to *T. T.* in a plea of trespass on the case, &c. And whereon the said *T. T.* by *Robert B.* his attorney complains, why whereas the said *T. C.* after the first day of *May* in the year of the Lord 1705, to wit, on the 20th day of *March* in the year of the Lord 1713, at *London* afore-said, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, made his certain note in writing, called a promissory note, with his own proper hand thereto subscribed, bearing date the same day and year last mentioned, and that note to the same *Thomas T.* then and there delivered; by which said note the said *T. C.* promised to pay to the same *T. T.* or bearer, the sum of 74 *l.* 10 *s.* four months after the date of that note, for value received; by reason whereof, and by force of the statute in such case lately made and provided, the same *T. C.* became liable to pay the same sum of money, according to the tenor of the note afore-said; and being so liable, the said *T. C.* in consideration thereof afterwards, the same day and year last mentioned, at *London* afore-said in the parish

parish and ward aforesaid, assumed upon himself, and to the same T. T. then and there faithfully promised to pay him the same sum of money, according to the tenor of the note aforesaid: and whereas also the said T. C. afterwards, to wit, on the said 20th day of *March* 1713 aforesaid, at *London* aforesaid in the parish and ward aforesaid, was indebted to the same T. T. in 100*l.* of lawful money of *Great Britain*, for divers goods, wares and merchandizes to the same T. C. at the special instance and request of him the said T. C. before then sold and delivered; and being so therein indebted, the same T. C. in consideration thereof afterwards, to wit, the said 20th day of *March* 1713 aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed on himself, and to the same T. T. then and there faithfully promised to pay to the same T. T. the said sum of 100*l.* when he should be thereto after required: and whereas also the said T. C. afterwards to wit, on the said 20th day of *March* 1713, at *London* aforesaid in the parish and ward aforesaid, in consideration that the same T. T. at the like instance and request of him the said T. C. had sold and delivered to the same T. C. other goods, wares and merchandizes, assumed on himself, and to the same T. T. then and there faithfully promised to pay to the same T. T. such sums of money, as the goods, wares and merchandizes last mentioned, at the time of the sale and delivery of the same were reasonably worth: and the said T. T. in fact says, that the goods, wares and merchandizes last mentioned, at the time of the sale and delivery of the same were reasonably worth other 100*l.* of like lawful money, to wit, at *London* aforesaid in the parish and ward aforesaid, whereof the same T. C. from the said T. T. then and there had notice: nevertheless the said T. C. his several promises and assumptions aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the same T. T. in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same T. T. altho' to do it the said T. C. on the 21st day of *September* 1714, at *London* aforesaid in the parish and ward aforesaid, by the same T. T. was required, hath not paid, or for the same hitherto in any wise contented, but hath altogether refused, and yet doth refuse, to pay him the same, to the damage of the said T. T. 100*l.* and therefore he produces the suit, &c. And the said T. C. by *E. Clive* his attorney comes and defends the force and injury when, &c. and says, that the said T. T. ought not to have his action aforesaid thereof against him, because he says, that well and true it is, that he did assume upon himself in manner and form as the said T. T. against him by his declaration aforesaid hath above supposed; but the same T. C. farther says, that after the making of the several promises and assumptions aforesaid above supposed to be made, to wit, on the 21st day of *September* 1714 aforesaid, he the said T. C. at *London* aforesaid in the parish and ward aforesaid, gave and delivered to the said T. T.

Scire Facias.

T. T. five hogsheads of tobacco, in full satisfaction and discharge of the several promises and assumptions aforesaid, and of all the money in the same mentioned; which said five hogsheads of tobacco, he the said *T. T.* in full satisfaction and discharge of the several promises and assumptions aforesaid, and of all the money in the same mentioned, from the same *T. C.* had and received: and this he is ready to verify: wherefore he prays judgment if the said *T. T.* ought to have or maintain his action aforesaid thereof against him: and the said *T. T.* says, that he by any thing by the said *T. C.* before alledged ought not to be precluded from having his action aforesaid thereof against him the said *T. C.* because he says, that the same *T. C.* did not give and deliver to the said *T. T.* the said five hogsheads of tobacco, in full satisfaction and discharge of the several promises and assumptions aforesaid, or of the money in those promises and assumptions mentioned, as the said *T. C.* hath in pleading alledged: and this he prays may be inquired of by the country: and the said *T. C.* says, that the plea aforesaid by him the said *T. T.* in manner and form aforesaid above in replying pleaded, and the matter in the same contained, are not sufficient in law for him the said *T. T.* to maintain his action aforesaid thereof against him the said *T. C.* had, to which the said *T. C.* hath no necessity, nor is by the law of the land obliged in any manner, to answer: and this he is ready to verify: wherefore for want of a sufficient replication in this behalf, the said *T. C.* as before prays judgment, and that the said *T. T.* may be precluded from having his action aforesaid thereof against the said *T. C.* And the said *T. T.* says, that the plea aforesaid by him the said *T. T.* in manner and form aforesaid above in replying pleaded, and the matter in the same contained, are good and sufficient in law for him the said *T. T.* to maintain the action of him the said *T. T.* against the said *T. C.* had; which said plea, and the matter in the same contained, the said *T. T.* is ready to verify and prove, as the court, &c. and because the said *T. C.* to that plea doth not answer, nor hitherto in any wise deny it, the said *T. T.* as before prays judgment and his damages, by reason of the non-performance of the promises and assumptions aforesaid: and because the justices here will advise themselves of and upon the premises before they give judgment thereon, day is given to the parties aforesaid here until on the morrow of the ascension of the Lord to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day comes here as well the said *T. T.* as the said *T. C.* by their attornies aforesaid; and upon this the premises being seen, and by the justices here fully understood, it seems to the same justices here, that the plea aforesaid by the said *T. T.* in manner and form aforesaid above in replying pleaded, and the matter in the same contained, are good and sufficient in law for him the said *T. T.* to maintain the action of him the said *T. T.* aforesaid against the said *T. C.* had, as the same *T. T.* hath above alledged; wherefore

wherefore the said *T. T.* ought to recover his damages by reason of the premisses against the said *T. C.* but because it is unknown what damages the said *T. T.* hath sustained by reason of the premisses, the sheriffs are commanded, that by the oath of good and lawful men of their bailiwick they diligently inquire what damages the said *T. T.* hath sustained, as well by reason of the premisses as for his costs and charges by him about his suit in this behalf expended; and the inquisition which they shall thereof make, they certify here on the morrow of the holy *Trinity* under the seal, &c. and the seals, &c. On which day here comes the said *T. T.* by his attorney aforesaid; and the sheriffs, to wit, *Peter Delme*, knt. and *Harcourt Masters*, knt. now return here a certain inquisition taken before them at the *Guildhall* of the city of *London*, situate in the parish of *St. Lawrence* in the *Old Jewry* in the ward of *Cheape* of the same city, on the 30th day of *May* last past by the oath of 12, &c. by which it is found, that the said *T. T.* hath sustained damages by reason of the premisses, besides his costs and charges by him about his suit in this behalf expended, to 76*l.* 11*s.* and for those costs and charges to 27*s.* 4*d.* Therefore it is considered, that the said *T. T.* do recover against the said *T. C.* his damages aforesaid to 77*l.* 18*s.* 4*d.* by the inquisition aforesaid in form aforesaid found, and also 15*l.* 11*s.* 8*d.* to the same *T. T.* at his request, for his costs and charges aforesaid, by the court here of increase adjudged, which said damages in the whole amount to 93*l.* 10*s.* And the said *T. C.* in mercy, &c. Signed 18th *June* in the 4th year of king *George*; which being read and heard, the said *William Jones* and *William G.* say, that the said *T. T.* ought not to have his execution against them for the said 100*l.* separately by them as aforesaid acknowledged, by virtue of the recognizance aforesaid, because they say, that no judgment for the said *T. T.* against the said *T. C.* after the time of the recognizance aforesaid acknowledged, and before the issuing of the said writs of *scire facias* in the said plea in the recognizance aforesaid mentioned in the said court here was given: and this they are ready to verify: wherefore they pray judgment if the said *T. T.* ought to have his execution for the said 100*l.* separately against them, by virtue of the recognizance aforesaid, &c.

Plea no judgment against the principal before the issuing of the *scire facias*.

And the said *T. T.* says, that he by any thing by them the said *William J.* and *William G.* above alledged ought not to be precluded from having his execution against them for the said 100*l.* separately acknowledged by virtue of the recognizance aforesaid, because he says, that after the time of the recognizance aforesaid acknowledged, and before the issuing of the said writs of *scire facias*, judgment was given in the said court here for the said *T. T.* against the said *T. C.* in the said plea in the recognizance aforesaid mentioned, to wit, in *Trinity* term in the 4th year of the reign of the said lord the now king, as by the record of that judgment which the lord the king for certain reasons caused to be brought into the court of the said lord the king before the king himself,

Repl. that judgment was given.

himself, and in the same court of the said lord the king before the king himself now remaining, appears: and this he is ready to verify by that record: whereupon the said *T. T.* is order'd by the court of the said lord the king here to have that record before the justices of the said lord the king here at *Westminster* from the day of *Easter* in five weeks at his peril: the same day is given to the said *William Jones* and *William G.* there, &c.

J. Comyns.

Demurrer.

And the said *William J.* and *William G.* say, that the plea aforesaid of him the said *T. T.* above in replying pleaded, and the matter in the same contained, is not sufficient in law to maintain him the said *T. T.* to have his execution aforesaid for the said 100 *l.* against the said *William* and *William*, by virtue of the recognisance aforesaid, to which the said *William* and *William* have no necessity, nor are by the law of the land obliged in any manner, to answer: and this they are ready to verify: wherefore for want of a sufficient replication in this behalf, the the said *William* and *William* as before pray judgment if the said *T. T.* ought to have his execution aforesaid for the said 100 *l.* against them by virtue of the recognisance aforesaid, &c. And for causes of demurrer in law, according to the form of the statute in such case lately made and provided, the said *William* and *William* do set down, and to the court here express these causes: for that in the replication aforesaid the judgment aforesaid is not alledged in certainty, nor is it alledged in what plea the judgment aforesaid was given, or in what time the original writ, on which the judgment aforesaid was given, was obtained and sued out, and for that the replication aforesaid is incertain, and wants form, in not alledging the record and proceedings of the plea aforesaid, upon which the judgment aforesaid was given.

The causes.

[411]

W. Branthwait.

Joinder.

And the said *T. T.* says, that the plea aforesaid by him the said *T. T.* in manner and form aforesaid above in replying pleaded, and the matter in the same contained, are good and sufficient in law to maintain him the said *T. T.* to have his execution aforesaid against the same *William* and *William* for the said 100 *l.* separately by them acknowledged, by virtue of the recognisance aforesaid; which said plea, and the matter in the same contained, the said *T. T.* is ready to verify and prove, as the court, &c. And because the said *William Jones* and *William G.* do not answer to that plea, nor hitherto in any wise deny it, the same *T. T.* as before prays execution against the said *William* and *William* for the said 100 *l.* separately by them acknowledged: and because the justices here will advise themselves of and upon the premises before they give judgment thereon, day is given to the parties aforesaid here until to hear their judgment

judgment thereon, because the same justices here thereof not yet, &c.

J. Comyns.

The King against the Governor and Company of Copper-Miners in England.

GEORGE by the grace of God, of Great Britain, France and Ireland, king, defender of the faith, &c. To the sheriff of Middlesex, greeting: whereas the lord and lady William and Mary, late king and queen of England, &c. by their letters patent made under the great seal of England, bearing date at Westminster 3d day of August in the 3d year of their reign, reciting, that great quantity of copper ore had been found in divers parts of their kingdom of England, which for want of skilful workmen to refine and purge the same had been intirely neglected, and not meliorated to the great damage and detriment of their kingdom of England in general, great sums of money being yearly remitted to foreign parts to pay for the said commodity: and whereas the trusty and well beloved subjects of the said late king and queen, Joseph Herne, knt. John Briscoe, Francis Tysson, esq; Samuel Howard and Richard Munford, of London, merchants had shewn, that they had found out several furnaces, machines, and other ways, means and inventions for the more easy and effectual refining, purging and purifying the same, which before then had not been used or practised within the dominions of the said king and queen by any other subject of the said king and queen; and whereas they had most humbly besought the said late king and queen to incorporate them and divers others in the said letters patent after mentioned, to use and promote the same by a joint stock: they the said late king and queen being willing to promote all endeavours tending to the public benefit of their kingdom, and to encourage so laudable an undertaking, of their special grace, certain knowledge and mere motion, by the letters patent aforesaid, for themselves, their heirs and successors, gave, granted, constituted, declared and appointed, that Joseph Herne, knt. Francis Parry, esq; Francis Tysson, esq; Constantine Vernatti, esq; John Briscoe, Samuel Howard, Richard Munford, Francis Gosfright, Nicholas Cutler, Henry Tate, John Barkstead and Thomas Chambers, and such others as afterwards should be admitted in the said company, from thenceforth should and might be a body corporate and politick in deed and in name, by the name of the governor and company of copper-miners in England; and them by the name of the governor and company of copper-miners in England, the same late king and queen for the purpose aforesaid really and fully for themselves, their heirs and successors, made, erected, ordained, constituted, established, confirmed and declared, by the letters patent aforesaid, to be a body corporate and politic in deed and in name.

Scire facias to repeal a patent granted by W. & M. to the company of copper-miners England for non-feasance.

[412]

name for ever ; and that by the said name of the governor and company of copper-miners in *England* they should have perpetual succession, and that they and their successors, by the name of the governor and company of copper-miners in *England*, should have perpetual succession ; and that they and their successors, by the name of the governor and company of copper-miners in *England*, might and at all times after should be persons able and capable in law to have, acquire, receive, possess, enjoy and retain lands, mines, mills, houses, rents, privileges, liberties, franchises and hereditaments of what kind, nature or quality soever they should be, to them and their successors ; and also to give, grant, demise, alien, assign and dispose of lands, tenements and hereditaments, and to do and execute all and singular other things by the same which to them belonged to do ; and that they and their successors, by the name of the governor and company of copper-miners in *England*, might plead and be impleaded, answer and be answered, defend and be defended, in all courts and places whatsoever, and before any judges, justices or officers of the same late king and queen, their heirs and successors, in all and singular actions, pleas, suits, complaints, matters and demands of what kind or quality soever, in the same manner and form, and as fully and amply as any other subjects of the same late king and queen of their kingdom of *England* might or could plead, or be impleaded, answer or be answered, defend or be defended ; and that the said governor and company of copper-miners in *England*, and their successors, should have a common seal for the dispatch of the affairs and business of the said company ; and that it should and might be lawful for the said governor and company, and their successors, from time to time, at their will and pleasure, to break, change, alter or new make that seal, as they should think fit : and the said late king and queen farther willed, and by the said letters patent, for themselves and their successors, ordained that there should be from thenceforth one of the said company to be elected and appointed in such manner and form as in the said letters patent is after expressed, who should be and should be called the governor of the said company, and that from thenceforth there should be a deputy-governor, and 10 or more assistants of the said company, to be elected and appointed in such manner and form as is after in the said letters patent directed, mentioned and expressed, for the negotiation and promotion of all things and matters belonging to the said company : and the said late king and queen did by the said letters patent make and ordain the said *Joseph Herne*, kn. to be the first and then present governor of the said company, and the said *Francis Parry* to be the first and then present deputy-governor of the said company, and the said *Francis Tysson*, *Constantine Vernatti*, *John Briscoe*, *Samuel Howard*, *Richard Munford*, *Francis Gosfright*, *Nicholas Cutler*, *Henry Tate*, *John Barkstead* and *Thomas Chambers*, to be the first and then present assistants of the said company, the said governor, deputy-governor and

and assistants, to continue in their respective offices until the 29th day of *September*, which should be in the year of the Lord 1692, and from thence until some other fit persons should be duly elected and sworn into the said offices of governor, deputy-governor and assistants of the said company, if they should so long live : and the said late king and queen did by the said letters patent, for themselves and their successors, give and grant to the said governor and company, and their successors, power and authority to hold and keep courts in any hall or place within the cities of *London* and *Westminster*, or in any other part of their kingdom of *England* or dominion of *Wales*, and there to assemble and meet together as often as they should think fit, to treat and consult about the affairs of the said company : and the said late king and queen did by the said letters patent, for themselves and their successors, grant and declare, that the said governor, deputy-governor and assistants, or any seven or more of them, due notice being given by the governor or deputy-governor for the time being to all the assistants, should make and be called the court of the said company, whereof the governor or deputy governor always to be one ; and that it should and might be lawful for the said court from time to time, and as often as they should think fit, to elect and appoint a treasurer or treasurers, secretaries, book-keepers, clerks, beadles, and other sub-officers necessary for the service of the said company, and to constitute, ordain and make such and so many reasonable laws, orders and ordinances, as they, or the major part of them then and there present, should think necessary and convenient for the good order and government of the said company, and those laws, orders and ordinances, or any of them, to alter and annul as the said court should see proper, and to put, impose and inflict reasonable punishments, pains and penalties, by fines and amercements, upon any delinquent or delinquents who should break or violate the said laws, orders or ordinances, so as aforesaid made, and to mitigate the same as they should think convenient ; which said fines, penalties and amercements should and might be levied, sued for, received, retained and recovered, by the said governor and company, and their successors, or by their officers and servants, from time to time for that purpose to be appointed, by distress or action of debt, or by any other legal ways or means, to the use and advantage of the said governor and company, and their successors, without any account to be given for the same to the said late king and queen, their heirs or successors : all and singular which said laws, constitutions, orders and ordinances, so as aforesaid to be made, the said late king and queen willed should be duly observed and kept, under the pains and penalties in the same contained, so nevertheless that the said laws, constitutions, orders and ordinances, fines and amercements, should be reasonable, and not contrary or repugnant to the laws or statutes of their kingdom of *England* : and the said late king and queen did farther for themselves, their heirs and

[413]

successors, grant to the said governor and company and their successors, that it should and might be lawful for the said governor, deputy-governor and assistants, and their successors, or the major part of them, the governor or deputy-governor always to be one, as often as they should think proper, to appoint committees, and to summon and call together the officers and members of the said company for the time being, to such courts and committees as well in *London* as in any other place or places within the kingdom of *England* or dominion of *Wales*, to treat and consult about the affairs of the said company, and to execute their by-laws in any part or parts of the said dominions of the said late king and queen : and farther the said late king and queen did by the said letters patent for themselves, their heirs and successors, give and grant to the said governor and company for the time being, whereof the governor or deputy-governor always to be one, from and after the 29th day of *September* then next following, full power and authority to elect and nominate yearly in and upon the 29th day of *September*, or within 14 days after, a governor, deputy-governor, and ten or more assistants out of the said company (so that the court of assistants should not at one and the same time exceed 18 in number) or at any time or times before the said 29th day of *September* then next ensuing, to augment the number of assistants of the said company, not exceeding 18 as abovesaid, by a majority of votes of all such who had or should have any share or shares in the joint stock in the said letters patent after-mentioned, due notice being given by the governor, or deputy-governor, to all the said persons respectively of such election; which said governor, deputy-governor and assistants so nominated and elected, should continue until the 29th day of *September* then next ensuing his or their election or elections, and from thence until some other person or persons should be duly elected and sworn into the said offices of governor, deputy-governor and assistants of the said company : and the said late king and queen by the said letters patent, for themselves, their heirs and successors, declared their will and pleasure, that the governor or deputy-governor for the time being yearly and every year should hold and call a court in and upon the said 29th day of *September* as aforesaid, in order for such election or elections, and should give fourteen days notice in writing of the same to all persons interested in the said company : and also the said late king and queen by the said letters patent, for themselves, their heirs and successors, did grant and ordain, that every member of the said company might deliver or send his vote in writing, whensoever he should have due and convenient notice of such election or elections, and that all votes in every election of governor, deputy-governor or assistants, should be delivered or sent in writing, and should be read and examined in open court, the governor or deputy-governor, and the major part of the assistants, being present; and that every member should have one vote for every share that he should have in the joint

joint stock, and no more; and that whensoever it should happen that there should be an equality of votes in the election of any officers or members of the said governor, the said governor, or in his absence the deputy-governor, for the time being, should have an additional vote; and that no person should be admitted into any office belonging to the said company until he had first in open court before the governor or deputy-governor taken the oaths appointed by an act of parliament made in the first year of the said late king and queen, intituled, *an act for abrogating the oaths of supremacy and allegiance, and appointing other oaths*; and an oath for the due execution of his or their office or offices, and the true and faithful observance of the said laws, constitutions, orders and ordinances of the said company: to which said governor or deputy-governor for the time being, the said late king and queen by the said letters patent, for themselves and their successors, gave full power and authority so to administer the said oaths: and moreover it was the will and pleasure of the said late king and queen, that every person who should be after elected into the office of governor, deputy-governor or assistant of the said company, should within fourteen days next after his election refuse to take any or either of the said oaths so ordained and appointed to be administered by the governor, deputy-governor and assistants, should forfeit and pay to the governor and company, and their successors, such fine and amercement as by such laws should be ordained and appointed, and some other person or persons should be elected and sworn into his or their place or places: and the said late king and queen did likewise for themselves and their successors give and grant to the said governor and company and their successors, or the major part of them in court assembled, full power and authority to remove and displace any governor, deputy-governor, assistants, or other officer of the said company, for misbehaviour, or other reasonable cause, and to elect another or others in the place or places of the person or persons so removed; and as often as it should happen that the governor or deputy-governor, or any assistant of the said company for the time being, should die, or be permitted by the major part of the governor, deputy-governor and assistants, in open court to surrender his or their office or offices, and that there should be any vacancy of governor, deputy-governor or assistant of the said company, it should be lawful for all such persons who should have any share in the said joint stock, due notice being given them by the governor or deputy-governor of such death or vacancy, to nominate and elect into his or their place or places any other person or persons of the said company to be governor, deputy-governor or assistant, by the ways, methods and limitations in the said letters patent before appointed mentioned and expressed, the said governor, deputy-governor and assistant, to continue in his or their office or offices until the 29th day of *September* then next ensuing his or their election or elections, and until some other person or persons should be elected and sworn

[414]

into his or their office or offices, he or they first taking in open court the oaths appointed, to be administered by the governor, deputy-governor and assistants, in the form aforesaid: and the said king and queen, of their farther grace and favour to the said governor and company, did by the said letters patent declare their will and pleasure, that if it should happen that any of the persons in the said letters patent before particularly named, or who should after be a member of the said company, who had promised or agreed, or should promise or agree by writing under his or their hand or hands, to lend or pay any sum or sums of money towards the joint stock of the said company, and within 20 days next after notice to him or them given by the governor or deputy-governor, or their known officer, should not bring in and deliver to the treasurer, by the said company appointed, such sum or sums of money as had been expressed and put in writing and subscribed by the said person or persons, that then and for ever after it should be lawful for the said governor and company, and the major part of them present, whereof the said governor or deputy-governor to be one, at any of their general courts or assemblies to remove and displace from and out of the said corporation and company every such person or persons so refusing to pay his or their subscription-money: and farther it was the will and pleasure of the said late king and queen, and the said late king and queen did by the said letters patent ordain, that the said *Joseph Herne*, knt. in the said letters patent before named to be the then present governor of the said company, should take his corporal oath before the chief justice of the court of the said late king and queen of the bench, or the mayor of *London* for the time being, and the said several persons in the said letters patent before named to be the then present deputy-governor and assistants of the said company, should take their corporal oath before the then present governor of the said company in such manner and form as by the said governor and company, or the major part of them, in any public court by the said company to be held, should be lawfully and reasonably imposed and devised, to whom severally and respectively the said late king and queen, by the said letters patent, for themselves and their successors, gave full power and authority so to administer the said oaths to the said officers: and the said late king and queen farther by the said letters patent, for themselves and their successors, willed, authorized and commanded, all and singular their judges, justices of the peace, mayors, sheriffs, bailiffs, constables, headboroughs, and all other officers and ministers of the said late king and queen, and their successors whatsoever, within the said kingdom of *England* and dominion of *Wales*, to be aiding and assisting to the said governor and company and their successors, and their agents and servants, in all things, according to the will and pleasure of the said late king and queen in the said letters patent before declared: and the said late king and queen of their farther special grace, certain knowledge and mere motion,

for

Scire Facias.

† 414

for the carrying on and promotion of the interest of the said company, did by the said letters patent for themselves, their heirs and successors, give and grant to the said governor and company and their successors, that they the said governor and company, and their successors, might and should be from thenceforth persons able and capable in law to have, and the said late king and queen did by the said letters patent for themselves, their heirs and successors, grant that they should and might have full, free and lawful licence, power and authority to take, have, acquire, receive, enjoy and possess to them and their successors for ever, any manors, lordships, messuages, mills, waters, rivers, rents, services, reversions, lands, mines, tenements and other hereditaments whatsoever, so nevertheless that the said manors, lordships, messuages, mills, waters, rivers, rents, services, reversions, lands, mines, tenements and other hereditaments, should not exceed the yearly value of 6000 *l.* beside all charges and reprises, and also goods and chattels of what value, nature or species soever, and also to give, grant, alien, assign and dispose of manors, lordships, messuages, mills, waters, rivers, rents, services, reversions, lands, mines, tenements, hereditaments, goods, chattels, liberties, privileges, franchises and jurisdictions, and also to do and execute all other lawful acts and things by the said name: and farther the said late king and queen did by the said letters patent for themselves, their heirs and successors, give and grant to all and singular the subject and subjects of the said late king and queen, and their successors whatsoever, special licence, power and authority, to give, grant, sell and alien, to the said governor and company, and their successors, any manors, lordships, messuages, mills, waters, rivers, rents, services, reversions, lands, mines, tenements and hereditaments whatsoever, so nevertheless that the same should not exceed the clear yearly value of 6000 *l.* besides all charges and reprises whatever, and also goods and chattels of what nature and value soever: and the said late king and queen did by the said letters patent for themselves, their heirs and successors, give and grant to the said governor and company, and their successors, full power and authority to make and raise that joint stock of any value whatever, and to order, negotiate and promote that joint stock from time to time for the purposes aforesaid, and to receive the benefit and advantage of the same, to the use of them the said governor and company and their successors, according to such part and share as they or any of them should have in the same, and to augment and increase, or reduce and diminish that joint stock from time to time, as they the said governor and company, and their successors, should judge most convenient and expedient: and lastly, the said late king and queen by the said letters patent, for themselves, their heirs and successors, granted to the said governor and company and their successors, that the said letters patent, or the inrolment of the same, should and might be in and by all things good, firm,

[415]

Scire Facias.

valid and effectual in law, according to the true intent and meaning of the same, and should be accepted, construed and adjudged, in the most favourable and beneficial sense for the best advantage of the said governor and company and their successors, as well in all courts of record as elsewhere, and by all and singular the officers and ministers of the said late king and queen, their heirs and successors whatsoever, in the said kingdom of *England* and dominion of *Wales*, any defect or contrariety contained in the said letters patent, or any thing, cause or matter whatsoever, to the contrary in any wise notwithstanding, as by the said letters patent inrolled before us in chancery is more fully manifest and appears: and whereas the said late king and queen by their other letters patent made under the great seal of *England*, bearing date at *Westminster* the 22d day of *September* in the 3d year of their reign, reciting, that whereas the said late king and queen by the said letters patent above-mentioned had graciously incorporated several their subjects mentioned in the same, for the refining, purifying and purging of copper oar within their kingdom of *England*, by the name of the governor and company of copper-miners in *England*, granting them sundry powers, privileges and authorities, for the better regulation and good government of the said company, as by the said letters patent is more fully manifest and appears: and reciting, that whereas the said governor and company had informed the said late king and queen, that there were great quantities of copper oar in several parts of their kingdom of *Ireland*, which for want of skilful workmen to refine and purify the same were totally neglected, and not meliorated; wherefore they had most humbly implored the said late king and queen to enlarge their powers to extend as well to *Ireland* aforesaid, as to their kingdom of *England*: the said late king and queen being therefore willing to give due encouragement to the said governor and company in carrying on and promoting the said art and mystery in the said kingdom of *Ireland*, which the said late king and queen were satisfied might tend to the publick benefit and advantage of their subjects, of their special grace, certain knowledge and mere motion, did will, ordain, grant, constitute, declare and appoint, by the said letters patent, for themselves, their heirs and successors, that the said governor and company and their successors, their agents, servants and assigns, from time to time, and at all times from thenceforth, might and should use, exercise and practice, as well the said art and mystery of refining, purifying and purging of copper oar, as all and singular the powers, licences, liberties, privileges and authorities in and by the above recited letters patent granted, in any part or place whatsoever within the kingdom of *Ireland*, as fully and amply to all intents and purposes, as if they the said governor and company had been incorporated within the said kingdom of *Ireland*, and as fully as the said governor and company either in their corporate capacity, or by their officers, agents and servants, or by any other lawful ways or means, might

might or could use or exercise the same within any part of their kingdom of *England*, and as if the same powers, authorities, liberties and privileges, had been again recited and mentioned in the place of the several provisions, reservations and restrictions in their said letters patent contained : and the said late king and queen did by the said letters patent, for themselves, their heirs and successors, grant to the said governor and company and their successors, being assembled in a court of assistants, full power and authority from time to time thenceforth, as they should see expedient, to appoint committees, and one or more secretary, accountant, controller, auditor, receiver or other officers, as they should think proper and necessary for the management and promotion of the joint stock of the said company, and the said art and mystery of refining, purifying and purging of copper ore within their said kingdom of *Ireland*, and them and every of them to displace and remove at the will and discretion of the said governor and company and their successors, in the court of assistants assembled as aforesaid : and the said late king and queen by the said letters patent, for themselves, their heirs and successors, did strictly charge, require and command, all and singular the mayors, bailiffs, justices, headboroughs, sheriffs, magistrates, commanders, constables and other the officers, ministers and subjects of the said late king and queen, and their heirs and successors whatsoever, within their said kingdom of *Ireland*, that they and every of them in their several places and stations, and according to their best and utmost endeavours, should be aiding and assisting to the said governor and company and their successors, and their agents, officers and servants, in and concerning the use, exercise and execution of the several arts and mysteries aforesaid, and of the several powers, privileges and authorities in the said letters patent before granted, according to the true intent and meaning of their said letters patent, as they and every of them regarded the good will of the said late king and queen, and should answer for the contrary at their utmost peril : and lastly, it was the will and pleasure of the said late king and queen, and the said late king and queen by the said letters patent, for themselves and their successors, granted to the said governor and company, and their successors, that the said letters patent, or the enrolment of the same, should be in and by all things good and firm, valid and effectual in law, according to the true intent and meaning of the same, and should be construed and adjudged in the most favourable and beneficial sense for the best advantage of the said governor and company and their successors, in all and singular the courts and places, as well within their said kingdom of *Ireland* as within their kingdom of *England*, notwithstanding the non-recital or not full recital of the said letters patent above-mentioned, or of any clauses, powers, authorities or articles in the same contained, and notwithstanding the not mentioning or not describing of the several ways, methods or means, whereby the said several arts or mysteries should be used or exercised, or

of any machine, instrument or material thereto belonging or appertaining, or of the several persons whom the said late king and queen by the said letters patent above specified had as aforesaid incorporated, and notwithstanding any other non-recital, misrecital, incertainty, ambiguity, defect or contrariety in the said letters patent, or any other thing, cause or matter whatsoever, to the contrary in any wise notwithstanding; provided always, that the said letters patent be inrolled within the space of 12 months next after the date of the same in the court of chancery of the said late king and queen in their kingdom of *Ireland*, as by the said letters patent in our chancery inrolled more fully is manifest and appears: and whereas the lady *Anne*, late queen of *Great Britain*, &c. by her letters patent, bearing date at *Westminster* the 2d day of *February* in the 9th year of her reign, reciting, that whereas the said late king and queen by the said letters patent made under their great seal of *England*, bearing date at *Westminster* the 3d day of *August* in the third year of their reign (reciting as in the same were recited) had given, granted, constituted, declared and appointed, that *Joseph Herne*, knt. *Francis Parrey*, esq; *Francis Tysson*, esq; *Constantine Vernatti*, esq; *John Briscoe*, *Samuel Howard*, *Richard Munford*, *Francis Gosfright*, *Nicholas Cutler*, *Henry Tate*, *John Barkstead* and *Thomas Chambers*, and such others as should be admitted into the said company in the said letters patent after mentioned, should from thenceforth be a body politick in fact and in name, by the name of the governor and company of copper-miners in *England*, and them by the name of the governor and company of copper-miners in *England*, the said late king and queen, by their letters patent for the purposes therein mentioned, had made, erected, ordained, constituted, established, confirmed and declared, to be a real body corporate and politick in fact and in name for ever: and farther the said late king and queen by their said letters patent had given and granted to the said governor and company for the time being, whereof the governor or deputy-governor for the time being to be always one, from and after the 29th day of *September* then next ensuing, full power and authority to nominate and elect yearly, on the 29th day of *September*, or within 14 days after, a governor, deputy-governor, and ten or more assistants out of the said company, so that the court of assistants should not exceed the number of 18 at one and the same time, or at any time or times before the said 29th day of *September* then next, to increase the number of assistants of the said company, not exceeding the number of 18 as aforesaid, by the majority of votes of all such persons who had or should have any share or shares in the joint stock in the said letters patent after mentioned, due notice being given by the governor or deputy-governor to all the said persons respectively of such election; which said governor, deputy-governor and assistants so nominated and elected, should continue until the 29th day of *September* next following his or their election or elections, and from thence until some other person or persons

[417]

persons should be duly elected and sworn into the office of governor, deputy-governor and assistant of the said company, and had declared their will and pleasure to be, that the governor or deputy-governor for the time-being should yearly and every year call and hold a court as aforesaid in and upon the said 29th day of *September*, in order for such election or elections, and should give 14 days notice in writing of the same to all persons interested in the said company, as in and by the said recited charter of incorporation more fully appears: and whereas the said governor and company had most humbly represented to the said lady *Anne*, late queen, &c. that the giving notice in writing of such election or elections to all persons interested in the said company, according to the letter of the said charter, was impracticable, and had most humbly besought the said late queen to grant and confirm to the said company their former rights and privileges, and that *John Moor*, gent. who then in fact was or acted for and as the then present governor, and that *Thomas Chambers*, gent. who then was or in fact acted for and as the then present deputy-governor, *Roger Alley*, *William Coatesworth*, *Richard Green*, *John Heathcote*, *William Heathcote*, *Samuel Haywood*, *Orlando Humphreys*, *Henry Lyell*, *Balthar Lyell*, *Gabriel Smith*, *Robert Walker* and *Josiah Wordsworth*, gent. who then were or in fact acted as the then present assistants of the said company, altho' regular and exact notice, according to the said charter, had not been given of the time of their election, might be confirmed; and also that in lieu of notice in writing of the time of holding the said court by the said charter appointed, publick notice in the *London Gazette* might be sufficient, and also that the day of election of the said governor, deputy-governor and assistants, by the said charter appointed yearly, might be changed from the said 29th day of *September* to the 25th day of *March*, as in the letters patent of the said lady the late queen is after mentioned: the said lady *Anne* the late queen being willing and desirous to remedy the said inconvenience, and grant the request of the said governor and company, of her special grace, certain knowledge and meer motion, did by her said letters patent for herself, her heirs and successors, give, grant and confirm to the said corporation or body politick their said name of the governor and company of copper-miners in *England*, and all and singular their rights, privileges, liberties, franchises, immunities and hereditaments whatsoever, to the said governor and company and their successors, in and by the said recited charter of incorporation, or otherwise, by the said late king and queen given, granted, made, erected, ordained, constituted, established, confirmed, declared or appointed, and by the said letters patent of the said lady *Anne* the late queen not after changed, or which the said governor and company, or their successors, might or could, or of right ought to have, hold, claim, use, occupy, possess, receive, retain or enjoy, by force, virtue or pretence of the said recited charter of incorporation, or any article, clause, matter or thing in the same

[418]

same contained, and by the said letters patent of the said lady the late queen not after changed: and the said lady the late queen did by her said letters patent for herself, her heirs and successors, make, ordain and confirm, the said *John Moor* to be the then present governor of the said company, and the said *Thomas Chambers* to be the then present deputy-governor of the said company, and the said *Roger Alley*, *William Coatesworth*, *Richard Green*, *John Heathcote*, *William Heathcote*, *Samuel Haywood*, *Orlando Humphreys*, *Henry Lyell*, *Balthar Lyell*, *Gabriel Smith*, *Robert Walker* and *Josiah Wordsworth*, to be the then present assistants of the said company, the said governor, deputy-governor and assistants, by the said letters patent of the said late queen appointed and confirmed, to be and continue in their respective offices until the 25th day of *March*, which should be in the year of the Lord 1711, and from thence until some other fit persons should be duly elected and sworn into the said offices of governor, deputy-governor and assistants of the said company, if they should respectively so long live: and to the intent that the time of election of the said governor, deputy-governor and assistants of the said company, might from thence for the future be changed, according to the humble request of the said petitioners, the said late queen by her said letters patent for herself, her heirs and successors, declared, that she gave and granted to the said governor and company, that the said governor and company for the time being, whereof the governor or deputy-governor for the time being always to be one, upon the 25th day of *March* in the year of the Lord 1711, or within 14 days next after, and so afterwards yearly and every year, on the 25th day of *March*, or within 14 days after, in such manner and form as by the said recited letters patent is for that purpose directed and appointed, should have full power and authority to nominate and elect a governor, deputy-governor, and ten or more assistants out of the said company, so that the said assistants should not at any time exceed 18 in number, or at any time or times before the said 25th day of *March*, which should be in the year of the Lord 1711, to augment the number of assistants not exceeding 18 in number as aforesaid, by a majority of votes of all such as had or then should have any share or shares in the joint stock of the said company, notice of such election being given in the *London Gazette* at least by the space of 14 days before the day of such election, as by other companies is generally used; which said governor, deputy-governor and assistants so nominated and elected, should and might continue until the 25th day of *March* from thence next ensuing such his or their election, and from thence until some other fit person or persons should be duly elected and sworn into the said offices of governor, deputy-governor and assistants of the said company: and the said late queen by the said letters patent did for herself, her heirs and successors, grant, declare and ordain, that the governor or deputy-governor for the time being on the 25th day of *March*, which should be in the year of the Lord

Lord 1711, or within 14 days after, and so yearly and every year, on the 25th day of *March*, or within 14 days after, should call and hold a court as aforesaid, to be held in such place as in the said recited letters patent is for that purpose mentioned, and that in lieu of notice in writing of the same in and by the said recited charter appointed to be given to all persons interested in the said company, publick notice in the *London Gazette*, inserted by the space of 14 days or more, before every such court held or election made of the time and place of such court to be held or election to be made, as by other companies is generally used should be, and by the said letters patent was declared should be esteemed to be sufficient notice to all persons interested in the said company; any thing in the said letters patent, or in the said recited charter of incorporation to the contrary thereof in any wise notwithstanding, as by the said letters patent inrolled in our chancery is more fully manifest and appears: and whereas we are given to understand that the said governor and company of copper-miners in *England* for the space of nine years now last past have not refined, purified and purged any copper, according to the tenor of the said several letters patent, but for all that time have wholly neglected and left off refining, purifying and purging any copper; and that the said governor and company of copper-miners in *England* have not for the space of nine years held any courts for the election of governor, deputy-governor and assistants of the said company, according to the tenor of the said several letters patent, nor for all the said time have elected a governor, deputy-governor and assistants of the said company, according to the tenor of the said several letters patent, but for all that time have intirely neglected to hold such courts, and to elect a governor, deputy-governor and assistants of the said company; and that the said governor and company of copper-miners in *England*, by colour of the said several letters patent, after the 24th day of *June* last past, to wit, on the second day of *August* last past, at the parish of *St. Martin in the Fields* in your county, a certain transferrable stock to the value of 500,000 *l.* have unlawfully collected and raised, and into many and sundry parts and shares have divided and set out, and from thence from time to time at sundry days and times between the said 2d day of *August* and the day of the issuing of this writ, at the said parish of *St. Martin in the Fields* in your county, the same stock, and the said several parts thereof, have transferred and assigned, and transfers and assignments of the several parts of that stock have unlawfully procured and permitted, contrary to the form and effect of the several letters patent aforesaid, when by the several letters patent aforesaid such transferrable stock was not intended or designed to be collected and raised, and transferred or assigned, against the form of the statute in such case lately made and provided; by reason of which said premisses the said several letters patent aforesaid to the said governor and company granted are and ought to be void, and of no force or effect in law:

Scire Facias.

law : and we being willing that what is just should be done in the premisses, command you, that by good and lawful men of your bailiwick you give notice to the said governor and company of copper-miners in *England*, that they be before us in our chancery in 15 days of *St. Martin* wheresoever it shall then be, to shew if they have or can say any thing for themselves, why the said several letters patent as aforesaid to them in form aforesaid granted, and the inrolments of the same for the reasons aforesaid, ought not to be cancelled, vacated, disallowed, and those several letters patent restored into our said chancery, there to be cancelled, and farther to do and receive those things which our said chancery shall consider in this behalf ; and have there the names of those by whom you shall give them notice, and this writ. Witnesse *William* archbishop of *Canterbury*, and the other keepers and justices of our kingdom, at *Westminster* 24th day of *October* in the 7th year of our reign.

Jekyll. Bulstrode.

The King against Yale, Esq;

Mich. 6 Geo.

Scire facias.

Middlesex, **B**E it remember'd, that the writ of the lord the now to wit. king under the seal of this exchequer, by the consideration of the barons here, hath issued in these words, to wit, *George* by the grace of God, of *Great Britain, France and Ireland* king, defender of the faith, &c. To the sheriff of *Middlesex*, greeting : whereas *Elibu Yale* of the parish of *St. Andrew, Holborn* in the county of *Middlesex*, esq; and *Matthew Kirwood*, knt. citizen and goldsmith of *London*, by their writing obligatory made at *Westminster* in the county of *Middlesex*, dated the 25th day of *April* in the 4th year of our reign, jointly and severally are bound to us in 40,000*l.* of lawful money of *Great Britain*, to be paid at a certain day past ; and they have not paid, nor caused to be paid, nor hath either of them paid us the same, as it is said : and we being willing to be satisfied, the said 40,000*l.* now due to us, with all the speed we can (as is just) command you, that you do not omit on account of any liberty, but that you enter it, and by good and lawful men of your bailiwick you give notice to the said *Elibu Yale*, that he be before the barons of our exchequer at *Westminster* on the 23d day of *October* next coming, to shew and alledge, if he hath or can say any thing for himself, why he ought not to have execution against him for the said 40,000*l.* and have there then the names of those by whom you shall give him notice, and this writ. Witnesse *T. Bury*, knt. at *Westminster* 17th day of *June* in the 5th year of our reign. By the writing obligatory aforesaid, and by the barons. *Marsham*. On which day *John Eyles*, bart. and *John Tash*, esq; sheriff of *Middlesex* aforesaid, returns here the writ aforesaid

The return.

Secre Facias.

† 419

aforesaid indorsed thus, to wit, the within named *Elibu Yale* hath nothing in my bailiwick where or by which I can give him notice, nor is he found in the same.

The answer of $\left\{ \begin{array}{c} \text{John Eyles, bart.} \\ \text{and} \\ \text{John Tass, esq;} \end{array} \right\}$ sheriff.

And now here on the said 23d day of *October* in this term comes here the said *Elibu Yale* in the writ of *scire facias* aforesaid mentioned by, *James Peirse* his attorney, and prays *oyer* of the writ of *scire facias* aforesaid, and of the return of the same; and to him they are read; he prays likewise *oyer* of the writing obligatory in the writ of *scire facias* aforesaid mentioned, and of the condition of the same writing obligatory; and to him they are likewise read in these words, to wit, Know all men by these presents, that we *Elibu Yale* of the parish of *St. Andrew Holborn* in the county of *Middlesex*, esq; and *Matthew Kirwood*, knt. citizen and goldsmith of *London*, are held and firmly bound to our most serene lord *George* by the grace of God, of *Great Britain, France and Ireland* king, defender of the faith, &c. in 40,000*l.* of good and lawful money of *Great Britain*, to be paid to the same lord the king, his heirs and successors; to which said payment well and truly to be made we bind ourselves, and each of us by himself, for the whole and in the whole, our and each of our heirs, executors and administrators, firmly by these presents, dated the twenty-fifth day of *April* in the fourth year of the reign of the said lord the king, and in the year of the Lord 1718. The condition of this obligation is such, that whereas *Edward Pauncefort*, esq; receiver general and acting cashier to the commissioners of excise, hath agreed to employ the above-bound Sir *Matthew Kirwood* for receiving from him the said *Edward Pauncefort*, his clerks or agents, all such sum and sums of money, and bill and bills of exchange, notes, bonds and other papers, as the said *Edward Pauncefort* shall from time to time think fit to pay or deliver to the said Sir *Matthew Kirwood*, or his order, for or on account of his majesty's revenue of excise on beer and ale and other liquors; and also the duties on malt, hops, soap, paper, silk, callicoes, &c. or any of them, or relating to any other revenues or payments belonging to his majesty, or the said *Edward Pauncefort* on his own private account: if therefore he the said Sir *Matthew Kirwood* do and shall from time to time, and at all times hereafter, when he shall be thereunto required, due and true account make with the said *Edward Pauncefort*, his agents, executors or assigns, of and concerning all such sum and sums of money, bill and bills of exchange, notes, bonds and other papers, as he the said Sir *Matthew Kirwood*, or any other person or persons by his order, privity or consent, shall receive, or that shall come to his or their or any of their hands, by virtue of the said trust reposed in him; and shall from time

Appearance.

Oyer.

[420]

Seire Facias.

to time, and at all times hereafter, when he shall be thereunto required, but more particularly every *Tuesday* in every week, except the same be a holyday, if required, well and truly satisfy, pay and deliver, or cause to be paid, satisfied and delivered in bank silver or gold, unto the said *Edward Pauncefort*, his agent, executors or assigns, all such sum or sums of money as he the said Sir *Matthew Kirwood*, or any other person or persons by his order, privity, or consent, at any time shall have received or collected, or shall have in his or their hands or custody, by virtue of any bill or bills of exchange, notes, bonds and other papers in any wise relating to the said revenues for the time being, or on any account belonging to his majesty, or unto the said *Edward Pauncefort*, on his own particular account: and if the said Sir *Matthew Kirwood* shall from time to time, when he shall be thereunto required by the said *Edward Pauncefort*, his executors, administrators or assigns, deliver unto the said *Edward Pauncefort*, his agent, executors, administrators or assigns, all and singular bill and bills of exchange, notes, bonds, book and books, papers, and all other things whatsoever relating to the said revenues, or any of them, or to the said *Edward Pauncefort*, according to the true intent and meaning of these presents, then the above obligation to be void and of none effect, or else to be and remain in full force and virtue: which being read and heard, and by him understood, he complains that he is by colour of the premises greatly aggrieved and disturbed; and this unjustly, because by protesting that the writ of *seire facias* aforesaid, and the return of the same, and the writing obligatory aforesaid, and the matter in the same contained, are not sufficient in law to charge him the said *Elibu Yale* with the said 40,000*l.* in the writing obligatory in the writ of *seire facias* aforesaid mentioned, or with any part thereof, to which he hath no necessity, nor is by the law of the land obliged, to answer; for plea nevertheless the said *Elibu Yale* says, that the said lord the king ought not to have execution against him for the said 40,000*l.* or any part thereof, because he says, that the said *Edward Pauncefort*, esq; in the condition of the same writing obligatory named, on the said 25th day of *April* in the 4th year of the reign of the said lord the king aforesaid, at *Westminster* in the county of *Middlesex*, imployed the said *Matthew Kirwood*, knt. for receiving from him the said *Edward Pauncefort*, his clerks or agents, all such sum and sums of money, and bill and bills of exchange, notes, bonds and other papers, as the said *Edward Pauncefort* should from time to time think fit to pay or deliver to the said *Matthew Kirwood*, or his order, for or on account of his majesty's revenue of excise on beer and ale and other liquors, and also the duties on malt, hops, soap, silk, callicoe, &c. or any of them, or relating to any other revenues or payments belonging to his majesty, or the said *Edward Pauncefort*, on his own private account; and that he the said Sir *Matthew Kirwood* continuell in the said employment from the said 25th day of *April* in the 4th year

Conditions performed specially.

[421]

year of the reign of the said lord the king abovesaid until the first day of September in the 5th year of the reign of the said lord the now king, and no longer, to wit, at *Westminster* afore said: and the same *Elibu* farther says, that the said Sir *Matthew Kirwood* from time to time during his continuance in his said employment, when he was thereto required, due and true account made with the said *Edward Pauncefort*, his agents or assigns, of and concerning all such sum and sums of money, bill and bills of exchange, notes, bonds and other papers, as he the said Sir *Matthew Kirwood*, or any other person or persons by his order, privity or consent, received or came to his, their or any of their hands, by virtue of the said trust reposed in him, and from time to time, and at all times during his continuance in his said employment, when he was thereto required, and more particularly every *Tuesday* in every week, not being a holyday, when he was thereto required, well and truly paid, satisfied and delivered, or caused to be paid, satisfied and delivered, in bank silver or gold, unto the said *Edward Pauncefort*, his agents, executors or assigns, all such sum and sums of money, as he the said Sir *Matthew Kirwood*, or any other person or persons by his order, privity or consent, at any time received or collected, or had in his or their hands or custody, by virtue of any bill or bills of exchange, notes, bonds or other papers, in any wise relating to the said revenues, for the time being, or on any his particular account; and that the said Sir *Matthew Kirwood*, from time to time during his continuance in his said employment, when he was thereto required by the said *Edward Pauncefort*, or his assigns, delivered unto the said *Edward Pauncefort*, his agents or assigns, all and singular bill and bills of exchange, notes, bonds, book and books, papers, and all other things whatsoever relating to the said revenues, or any of them, or to the said *Edward Pauncefort*, according to the true intent and meaning of the said writing obligatory, to wit, at *Westminster* in the county afore said: and this the said *Elibu Yale* is ready to verify and prove, as the court, &c. Wherefore he prays judgment, and that the said *Elibu Yale* from the said sum of 40,000*l.* in the writ of *scire facias* afore said mentioned may be acquitted and discharged, and that the writing obligatory afore said may be cancelled, and to the same *Elibu Yale* delivered, and that he the said *Elibu Yale* as to the premisses from this court may be dismissed.

And the honourable *Nicholas Lechmere*, esq; the attorney general of the said lord the now king, who for the said lord the king prosecutes, for the said lord the king says, that by any thing by the said *Elibu* above in pleading alledged, the said lord the now king ought not to be precluded from having his execution against the said *Elibu* for the said 40,000*l.* in the writ afore said mentioned, because he says, that after the making of the writing obligatory afore said, and during the said continuance of the said Sir *Matthew Kirwood* in the business and employment afore said in the plea afore said above-mentioned, to wit, 30th day of

Breach in non-payment of
1379*ol.* 8*s.* 3*d.*

Scire Facias.

of *August* in the 5th year of the reign of the said lord the king, and by virtue of the trust in the condition aforesaid mentioned, he the said Sir *M. Kirwood* in the writing obligatory aforesaid above named, or some other person or persons by his order, privity or consent, hath or have received and had in their hands and custody from the said *Edward Pauncefort*, the same *Edward* there for all the time aforesaid being receiver general and acting cashier to the commissioners of excise aforesaid, or from his clerks or agents, money and several bills of exchange, notes and other papers relating to the said revenues, or some of them, in the condition aforesaid mentioned, belonging to his said majesty; and that by virtue thereof the said Sir *M. Kirwood* then received and had several sums of money, amounting in the whole to the sum of 13790 *l.* 8*s.* 3¼*d.* of lawful money of *Great Britain*, to wit, at *Westminster* in the county of *Middlesex* aforesaid; which said sums of money he the said Sir *Matthew* hath not well and truly satisfied, paid and delivered, or caused to be satisfied, paid and delivered, in bank gold or silver, unto the said *Edward Pauncefort*, his agents or assigns, according to the tenor of the condition aforesaid; but they are yet unpaid, altho' the said Sir *Matthew Kirwood* was then and there required by the said *Edward Pauncefort*, but he hath altogether neglected to do it, and yet refuses, against the form and effect of the condition aforesaid; and this the said attorney general for the said lord the king is ready to verify, as the court, &c. Wherefore he prays judgment, and that the said lord the now king may have his execution against the said *Elibu Yale* for the said 40,000 *l.* in the writ of *scire facias* aforesaid mentioned, &c.

Edw. Northey.

That the defendant paid it to plaintiff's order.
Pract. Reg. 461.

[422]

And the said *E. Yale* says, that by any thing by the honourable *N. Lechmere*, attorney general of the said lord the now king, above in replying alledged, execution for the said 40,000 *l.* against him ought not to be had, because he says, that Sir *Matthew Kirwood* above named hath paid the said sum of 13790 *l.* 8*s.* 3¼*d.* to one *Conrade de Gols*, by the order of the said *Edward Pauncefort*, for the use of the said *Edward Pauncefort*, according to the form and effect of the said condition: and this the said *Elibu* is ready to verify, as the court, &c. Wherefore he prays judgment, &c.

That he hath not paid it.

And the said attorney general of the said lord the king for the same lord the king says, that the said Sir *Matthew Kirwood* hath not paid the said sum of 13790 *l.* 8*s.* 3¼*d.* to the said *Conrade de Gols*, in manner and form as the said *Elibu* above in rejoining hath alledged: and this the said attorney general for the said lord the king prays may be inquired of by the country.

Demurrer.

And the said *Elibu Yale* says, that the plea aforesaid by the said attorney general of the said lord the king above in surrejoining pleaded, and the matter in the same contained, is not sufficient in law to intitle the said lord the king to have his execution

execution against him the said *Elibu* for the said 40,000*l.* and that he to that plea in manner and form aforesaid pleaded hath no necessity, nor is by the law of the land obliged in any wise, to answer: and this he is ready to verify: wherefore for want of a sufficient plea in this behalf, the said *Elibu* prays judgment, and that the said lord the king may be precluded from having his execution against him the said *Elibu*.

And the said attorney general of the said lord the king says, Joinder.
that the matter aforesaid by him for the said lord the king by his surrejoinder aforesaid above alledged is sufficient in law to have execution for the said lord the king for the said 40,000*l.* in the writ aforesaid mentioned; which said matter he for the said lord the king is ready to verify, and which said matter the said *Elibu Yale* doth not deny, nor thereto in any wise answer, but doth wholly refuse to admit that averment: wherefore he prays judgment, and that the said lord the king may have execution against the said *Elibu Yale* for the said 40,000*l.* in the writ aforesaid mentioned therefore to judgment: and because the

barons here will advise themselves of and upon the premisses before they give their judgment thereon, day is given here to the said *Elibu Yale* in the same state as now until on the octave of *St. Hilary*, because the same barons thereof not yet, &c. On which day the said *Elibu Yale* comes here as before, and for the reason aforesaid hath day farther until from the day of *Easter* in 15 days: on which day the said *Elibu Yale* comes here as before, and for the reason aforesaid hath day farther until from the day of *St. Michael* in three weeks: on which day the said *Elibu Yale* comes here as before, and for the reason aforesaid hath day farther until *Wednesday* the 23d day of *November* in the same *Michaelmas* term: on which day the said *Elibu Yale* comes here as before; whereupon the premisses being seen by the barons here, and mature deliberation being thereon had between them, it is

considered by the same barons, that the said lord the king may have execution against the said *Elibu Yale* for the said 40,000*l.* in the writ aforesaid mentioned, by reason of the premisses: afterwards, to wit, on the 21st day of *December* in the year aforesaid, the lord the king sent here his writ close under the great seal of *Great Britain*, directed to the treasurer and barons of this exchequer, in these words, to wit, *George* by the grace of God, of *Great Britain, France and Ireland* king, defender of the faith, &c. To his treasurer and barons of his exchequer, greeting:

whereas in the record and proceedings, and also in the rendition of the judgment against one *Elibu Yale*, esq; upon a certain writ of *scire facias* out of our court of exchequer, on a certain writing obligatory, in which the said *Elibu Yale*, together with *Sir Matthew Kirwood*, is bound to us in the sum of 40,000*l.* against him issued at our suit before you the said barons in our said court of our exchequer, as it is said, a manifest error hath happened, to the great damage of him the said *Elibu*, as by his complaint we

Continuance.

Judgment for the king.

Errors

31 E. 3. c. 12.

[423]

have understood : and whereas in a statute made in a parliament of the lord *Edward* the Third, late king of *England*, our predecessor, held at *Westminster* in the 31st year of his reign, among other things it is accorded and established, that in all cases touching the king or other persons, where a man complaineth of error made in process in the exchequer, the chancellor and treasurer should cause to come before them in any chamber of counsel nigh the exchequer, the record of the process out of the exchequer, taking to them the justices and other sage persons, such as to them seemeth to be taken, and should also cause to be called before them, the barons of the exchequer, to hear their informations and the causes of their judgments, and thereupon should duly examine the business, and if any error be found, they should correct and amend the rolls, and after send them into the exchequer, to make thereof execution as pertaineth, as in the same statute more fully is contained : we therefore being willing that the error, if any hath been, should be duly corrected, according to the form of the statute aforesaid, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment thereon be given, then the record and proceedings aforesaid, with all things touching them, before the lord chancellor and you, you the said treasurer in the chamber of counsel nigh the exchequer aforesaid, called the *Counsel Chamber*, on *Tuesday*, to wit, the 31st day of *January* next ensuing you cause to come, that the said chancellor and you the said treasurer, the record and proceedings aforesaid being seen and examined, and your informations being heard, you the said barons farther cause to be done in this behalf, with the advice of the justices and other such sage persons, what of right, and according to the form of the statute aforesaid shall be to be done. Witness ourself at *Westminster* the 21st day of *December* in the 7th year of our reign.

General error
assigned.

And the said *Elibu Yale* comes here in his proper person and says, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that the judgment aforesaid is given for the said lord the king against him the said *Elibu Yale*, when the judgment aforesaid ought to have been given for the same *Elibu Yale* against the said lord the king : therefore in that it is manifestly erroneous.

Con. Phipps.
Tho. Boote.

Joinder.

And *Robert Raymond*, knt. attorney general of the said lord the king, says, that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is no error; and he prays for the said lord the king, that the court of the said lord the king here may proceed to the examination, as well of the record and proceedings aforesaid, as of the matter aforesaid

said above for error assigned, and that the said judgment may be in all things affirmed.

Rob. Raymond.
P. Yorke.

The points principally insisted on in the several arguments of this cause, on the behalf of the defendant, did not regard the justice of the demand, but were matters of form, viz.

1st Object. That this was not such a bond to the king, as that a *scire facias* could lie thereon, it not being taken pursuant to the statute 33 H. 8. cap. 29. which requires that the penalty in the obligation should be made payable to the king, his heirs or executors; whereas in this case the penalty is made payable to the king, his heirs or suecessors; that the word (*executor*) being omitted, the act was not pursued; and without the aid of that act this particular method of proceeding by *scire facias* could not be maintained upon a bond entered in to the king.

Ans. To this objection it was answered and resolved by the judges in both courts, that those words in the statute 33 H. 8. were only directory, and it was not necessary to insert in the bond all the words mentioned in the act; that the principal intention of the law-makers was that bonds taken to the king, which were to have so great a privilege beyond other bonds, should be for some matter concerning the king's interest, and should be made to him in his regal name, and not in the name of common persons to his use, which was the mischief design'd to be prevented by the statute, and that this had been formerly so adjudged.

2d Obj. That this bond was not within the said statute, because it was not taken by a proper authority. Mr. Pauncefort, to whom by the condition the payments were to be made from time to time, not appearing to be an officer of the crown, but of the commissioners of excise, and consequently having no power to take a bond in the king's name.

Ans. In answer to this objection it was insisted, and so held by the court, that it neither did nor was necessary to appear by what authority the bond was taken. That the only requisites the statute had made necessary were, that the bond should be made to the king by his regal name, and for a cause or causes touching or concerning the king's majesty; that those sufficiently appeared in the present case, the monies secured by this bond being mentioned in the condition to arise from the revenues of excise. But it was likewise insisted, that Mr. Pauncefort appeared upon this bond to be an officer of the crown sufficient for this purpose; for he is described in the condition to be receiver general and acting cashier to the commissioners of excise; that the commissioners of excise are known officers of the crown, and a subordinate officer under them being appointed by an authority

[424]

Scire Facias.

derived from the crown may properly enough be said to be an officer of the king; and if this objection should prevail, it would avoid most of the bonds taken upon account of the revenue.

3d Obj. The next exception was to the condition, that it did not only require Sir *Matthew Kirwood* to account for and pay all sums of money and bills that should be deposited in his hands on account of his majesty's revenue, but also such as belonged to Mr. *Pauncefort* himself, and that a bond could not be taken in the king's name for Mr. *Pauncefort*'s own money within the statute above-mentioned.

Ans. The answer to this objection was, that tho' where the condition of a bond is intire and the whole is unlawful, it is in most cases void: yet it is a known allowed distinction, that where the condition consists of several different parts, and some of them are lawful, or such for which the bond might be taken, and the others not, it is good for so much as is lawful, and void for the rest. That therefore this bond was good for so much as concerned the king's revenue, and the only breach assigned in this cause is for non-payment of money received by Sir *Matthew Kirwood* on account of that revenue.

4th Obj. The last objection was to the form of the replication, That the breach of the condition therein assigned was too general and uncertain, viz. That Sir *Matthew Kirwood*, or some other person or persons by his order, privity or consent, received and had in their custody of the said *Edward Pauncefort*, or his clerk or agents, money and bills touching the said revenues belonging to the king; and that by the means thereof Sir *Matthew Kirwood* received several sums of money amounting to 13790 *l.* 8 *s.* 3½ *d.* which he had not paid or satisfied, tho' often requested; and it was insisted that this was uncertain, both as to the persons of whom the money was received, and by whom the receipt was, and involved together several facts of different natures.

Ans. In answer to this objection it was urged, that this was sufficiently certain, because in the conclusion of the replication it was alledged, that by means of several particulars before-mentioned, Sir *Matthew Kirwood* received several sums of money amounting to 13790 *l.* 8 *s.* 3½ *d.* And in case of bonds of this kind it has been often held, that it was not necessary to shew of what persons in particular the several sums were received; but however that should be, the averment of the receipt was only the introduction to the breach, and that the real assignment of the breach was the non-payment: but it was farther insisted, that whatever force there might have been in this objection, had the case stood upon a general demurrer to the replication, yet it was now supplied by the defendant's rejoinder, who by passing over the receipt and taking issue upon the other fact, viz. that he had paid

Scire Facias.

† 424

paid the said sum of 13790*l.* 8*s.* 3½*d.* had admitted the receipt of the money : and of this opinion was the whole court.

On the several arguments of this cause these cases were cited by the counsel.

Hardr. 227. *Stat.* 30 *H.* 8. c. 29. 1 *Ventr.* 166. *Raym.* 225. 2 *Cro.* 339, 220, 170.
Stat. 8 & 9 *W.* 3. cap. 10. *Plow.* 60. 2 *Saund.* 124.
2 *Leo.* 34.
7 *Co.* 19. *Savill* 111. 10. pl. 25. 4 *Inst.* 115. *Godb.* 290.
3 *Cro.* 328, 708, 903, 917. *Dy.* 67, 197, 328. *Peck's case*
in the exchequer. *Cro. Eliz.* 253, 393. *Lut.* 579. 1 *Lev.*
94, 194. 3 *Lev.* 393.

This judgment 4 *Decemb.* 1721, was affirmed by the house of lords on a writ of error there.

Trespas.

*Farnaby against Reeves and others.**Trin. II A. Roll. 1562.*

Error on a judgment in C. B. in trespass. Count on the writ. Trespass in breaking plaintiff's close, and consuming the grass with cattle.

Cutting down the trees.

Digging the soil.

Making ditches, and subverting the soil with carts. Count upon the writ. The closes particularly set forth.

The cattle.

The trees.

The soil.

The length and breadth of the ditches.

Per quod plaintiff lost the profit for 3 months.

Kent, **THOMAS** Reeves late of *Sevenoake* in the county to wit. afore said, wheelright, *Thomas Billingsby* late of the same in the county afore said, labourer, *George Adams* late of the same in the county afore said, labourer, *John Willington* late of the same in the county afore said, labourer, *Thomas Wright* late of the same in the county afore said, labourer, *Henry Holland* late of the same in the county afore said, labourer, and *Richard Hope* late of the same in the county afore said, labourer, were attached to answer to *Francis Farnaby*, esq; in a plea, why with force and arms the closes of him the said *Francis*, at *Sevenoake* afore said, they broke, and his grass to the value of 20*s.* there lately growing with their feet by walking trod down and consumed, and his other grass, to the value of 40*s.* there likewise lately growing with certain cattle eat up, trod down and consumed, and his trees to the value of 10*l.* there lately growing cut down, took and carried away, and in his soil there dug, making a certain ditch there, whereby the same *Francis* the profit of his soil afore said for a long time lost, and in his other soil there dug, making another ditch there, whereby the said *Francis* the profit of his same soil afore said for a long time lost, and his other soil there with carts subverted, whereby the same *Francis* the profit of his same soil for a long time lost, and other outrages on him committed, to the great damage of him the said *Francis*, and against the peace of the lady the now queen, &c. And whereon the said *Francis* by *Henry Streatfield* his attorney complains, that the said *Thomas*, *Thomas*, &c. on the first day of *June* in the 10th year of the reign of the lady the now queen, with force and arms, &c. his closes, to wit, one close called *Foxglove*, one other close called *Breadfield*, and one other close called *Oxenlease*, otherwise *Becketts*, at *Sevenoake* broke, and his grass to the value, &c. there lately growing with their feet by walking trod down and consumed, and his other grass to the value, &c. there likewise lately growing with certain cattle, to wit, horses, oxen, cows, hogs and sheep, eat up, trod down and consumed, and his trees, to wit, 5 oaks, 7 elms and 8 ashes, to the value, &c. there lately growing cut down, took and carried away, and in the soil, to wit, 10 acres of his land there dug, making a certain ditch in length 40 rods and an half, and in breadth 8 feet, whereby the said *Francis* the profit of his soil afore said for a long

long time, to wit, for the space of three months then next ensuing lost, and in other soil, to wit, 10 acres of his land there dug, making another ditch, in length 17 rods and in breadth 6 feet, whereby the said *Francis* the profit of his same soil for a long time, to wit, for the space of three months then next ensuing lost, and other soil, to wit, one acre and an half of his land there with carts subverted, whereby the said *Francis* the profit of his same soil for a long time, to wit, for the space of three months then next ensuing, lost, the trespafs aforesaid, as to the treading down and consuming the said grafs with their feet by walking, and the eating up, treading down and consuming the other grafs aforesaid, with the cattle, from the said first day of *June* in the 10th year of the reign of the said lady the queen abovesaid unto the first day of *April* in the 11th year of the reign of the said lady the queen, at fundry days and times continuing, and other outrages, &c. to the great damage, &c. and against the peace, &c. whereby he says that he is prejudiced, and hath damage to the value of 20 *l.* And therefore he produces the suit, &c.

And the said *T. Reeves, T. Billingsby, &c.* by *J. Lilly* their attorney come and defend the force and injury when, &c. and as to the force and arms, and whatever is against the peace of the said lady the queen, and as to the cutting, taking and carrying the oaks, elms and ashes in the declaration aforesaid mentioned, and the digging of the ditch aforesaid in the declaration aforesaid likewise mentioned, to be in length 17 rods, and in breadth 6 feet, say, that they are in no wise guilty thereof: and of this they put themselves on the country: and the said *Francis* thereof likewise: and as to the breaking the closes aforesaid of him the said *Francis*, called *Foxglove, Broadfield and Oxenleafe*, otherwise *Becketts*, and the treading down and consuming of the grafs of him the said *Francis* in the closes aforesaid growing with their feet by walking, and the eating up, treading down and consuming the other grafs of him the said *Francis* in the same closes of him the said *Francis* growing, and the continuance thereof for the time aforesaid in the declaration aforesaid mentioned, with the cattle, and the subverting the soil of him the said *Francis* there with the carts, the said *T. Reeves, T. Billingsby, &c.* say, that the said *Francis* ought not to have his action aforesaid thereof against them, because they say, that long before the said time when the trespafs aforesaid is supposed to be done, and at the said time when, &c. the said *T. Reeves* was and yet is seised in his demesne as of fee of and in a close called *Foxglove*, and of and in another close called *Foxglove Wood* in *Sevenoake* aforesaid; and the same *T. Reeves*, and all those whose estate he hath in the said closes of him the said *T. Reeves*, called *Foxglove* and *Foxglove Wood*, for time immemorial have used and been accustomed to have a certain way for themselves, their servants, farmers and tenants, as well a horse-way as a foot-way, leading from the king's highway in *Sevenoake* aforesaid, in, by and thro' the

[426]

As to the force and arms, cutting the trees and digging one ditch not guilty.

As to the trespafs with the cattle, &c. they prescribe for a way.

said closes of him the said *Francis*, called (*as above*) unto the said closes of him the said *T. Reeves*, called, (*&c.*) and so back from the said closes of him the said *T. Reeves*, called (*as before*) in, by and thro' the said closes of him the said *Francis*, called, *&c.* to the king's highway aforesaid, to pass and repass, ride and ride back, drive and drive back their cattle, and to carry and carry back, draw and draw back their carts and carriages at all times of the year at their will, as to the closes of him the said *T. Reeves* belonging and appertaining; and the said *T. Reeves* of the said closes called *Foxglove* and *Foxglove Wood* so being seised, the said *T. Reeves* in his own right, and the said *T. Billingby*, *George*, *&c.* as servants of the said *T. R.* and by his command at the said time when, *&c.* from the said king's highway unto the said closes of him the said *T. Reeves*, called, *&c.* in, by and thro' the said closes of him the said *Francis*, called (*as above*) passed, and the cattle, to wit, the horses and oxen of him the said *T. Reeves*, then drawing the carts of him the said *T. Reeves*, from the king's highway aforesaid unto the said closes of him the said *T. Reeves*, called, *&c.* in, by and thro' the said closes of him the said *Francis*, called, *&c.* in the way aforesaid in the said closes of the said *Francis* drove, and back from the same closes of him the said *T. Reeves*, called *Foxglove* and *Foxglove Wood*, to the king's highway aforesaid, in, by and thro' the said closes of him the said *Francis*, called, *&c.* in the way aforesaid in the same closes of the said *Francis* passed, and the said horses and oxen of him the said *T. Reeves*, then drawing the said carts of him the said *T. Reeves*, from the said closes of him the said *T. Reeves*, called, *&c.* unto the king's highway aforesaid, in, by and thro' the said closes of him the said *Francis*, called, *&c.* in the way aforesaid in the same closes of him the said *Francis* drove back, and other cattle of him the said *T. Reeves*, to wit, the cows, hogs and sheep of him the said *T. Reeves* aforesaid, from the king's highway aforesaid unto the said closes of him the said *T. Reeves*, called, (*as before*) in, by and thro' the said closes of him the said *Francis*, called, (*&c.*) in the way aforesaid in the same closes of him the said *Francis* drove, using the same way in the said closes of him the said *Francis* in form aforesaid, as they lawfully might; and that in the same passing and repassing, driving and driving back, and driving and using the way aforesaid in the said closes of him the said *Francis* in form aforesaid, at the sundry times in the declaration aforesaid mentioned, the same *T. Reeves*, *T. Billingby*, (*&c.*) the said closes of him the said *Francis* a little broke, and the grass aforesaid in the way aforesaid in the said closes of him the said *Francis* then growing with their feet by walking a little trod down and consumed, and the horses, oxen, cows, hogs and sheep aforesaid, other grass in the way aforesaid in the said closes of him the said *Francis* then growing a little trod down and consumed, and against the will of them the said *T. Reeves*, *T. Billingby*, (*&c.*) eat up, and also the said *T. Reeves*, *T. Billingby*, (*&c.*) the soil of the same closes of him the said *Francis* by the same driving

driving of the carts aforefaid subverted, which is the fame trespafs, as to the breaking of the closes aforefaid of him the faid Francis, called, (&c.) and the treading down and consuming of the grafs aforefaid of him the faid Francis in the closes aforefaid growing, with their feet by walking, and the eating up, treading down and consuming of other grafs of him the faid Francis in the faid closes of him the faid Francis growing, with the cattle aforefaid, and the continuance thereof for the time aforefaid in the declaration aforefaid mentioned, and the subverting the foil of him the faid Francis with carts, whereof the faid Francis above now complains: and this they are ready to verify: wherefore they pray judgment if the faid Francis ought to have his action aforefaid thereof againft them, &c. And as to the digging of the ditch in the declaration aforefaid mentioned to contain 40 rod and an half in length and 8 feet in breadth, the fame T. Reeves, T. Billingfby, &c. fay, that the faid Francis ought not to have his action aforefaid thereof againft them, becaufe they fay, that the faid Francis before the faid time when, &c. to wit, on the faid 1st day of June in the 10th year abovefaid, at Sevenoake aforefaid, gave him the faid T. Reeves leave to dig the fame ditch; by virtue whereof the faid T. Reeves in his own right, and the faid T. Billingfby and George, &c. as servants of the faid T. Reeves, and by his command, the faid time when, &c. did dig the faid ditch in the declaration aforefaid mentioned to contain 40 rod and an half in length and 8 feet in breadth, as they lawfully might: and this they are ready to verify: wherefore they pray judgment if the faid Francis ought to have his action aforefaid thereof againft them, &c.

[427]

And as to the digging the other ditch they plead a licence from the plaintiff.

And the faid Francis as to the faid plea of the faid Thomas, Thomas, George, Alexander, John, Thomas, Henry and Richard, the now defendants, as to the breaking of the closes aforefaid of the faid Francis, called Foxglove, Broadfield, &c. treading down and consuming of the grafs of him the faid Francis in the fame closes growing, with their feet by walking, and eating up, treading down and consuming of other grafs of him the faid Francis in the fame closes growing, and subverting the foil of him the faid Francis there with carts above pleaded, fays, that he by any thing in the fame plea before alledged ought not to be precluded from having his action aforefaid againft them, becaufe he fays, that they of their own wrong thofe closes broke, and the grafs there growing with their feet by walking trod down and consumed, and other grafs there growing with the cattle aforefaid eat up, trod down and consumed, and the foil there with carts subverted, as the faid Francis above againft them complains; without that, that the faid T. Reeves, and all thofe whose estate he hath in the faid closes of him the faid T. Reeves, called Foxglove and Foxglove Wood, for time immemorial have had, have been used and accustomed to have, a certain way for themselves, their servants, farmers and tenants, as well a foot-way as a horse-way, leading from the king's highway in Sevenoake aforefaid, in,

Repl' as to the first plea, *de injuria sua propria*.

And traverses the prescription.

As to the ad-
plea the plaintiff
denies the li-
cence.

Rejoinder.

Issue on the
traverse.

Venue awarded.

by and thro' the said closes of him the said *Francis*, called, &c. unto the said closes of him the said *T. Reeves*, called, &c. and so back from the said closes of him the said *T. Reeves* in, by and thro' the said closes of him the said *Francis*, called, &c. to the king's highway aforesaid, to pass and repass, ride and ride back, drive and drive back their cattle, and to carry and carry back, draw and draw back their carts and carriages at all times of the year at their will, as to the said closes of him the said *T. Reeves* belonging and appertaining, as by the plea aforesaid is above in that behalf supposed: and this he is ready to verify: wherefore he prays judgment and his damages by reason of that trespass, to be adjudged to him, &c. And as to the said plea of the said *Thomas, Thomas, George, &c.* the now defendants, as to the digging of the ditch aforesaid in the declaration aforesaid mentioned to contain 40 rods and an half in length and 8 feet in breadth above pleaded, he says, that by any thing in the same plea before alledged he ought not to be precluded from having his action aforesaid thereof against them, because he says, that he the same *Francis* did not give him the said *T. Reeves* leave to dig the same ditch, as by the plea aforesaid is in that behalf above supposed: and this he prays may be inquired of by the country: and the said *Thomas, Thomas, &c.* the now defendants thereof likewise, &c.

And the said *Thomas, Thomas, &c.* as to the breaking of the closes aforesaid of him the said *Francis*, called (*as before*) and treading down and consuming of the grass of him the said *Francis* in the same closes growing with their feet by walking, and eating up, treading down and consuming other grass of him the said *Francis* in the same closes of him the said *Francis* growing, with cattle, and the continuance thereof for the time aforesaid in the declaration aforesaid mentioned, and subverting the soil of him the said *Francis* there with carts, as before say, that the said *T. Reeves*, and also those whose estate he hath in the said closes of him the said *T. Reeves*, called, &c. for time immemorial have had, have been used and accustomed to have, a certain way for themselves, their servants, farmers and tenants, as well a foot-way as a horse-way, leading from the king's highway in *Sevenoake* aforesaid, in, by and thro' the said closes of him the said *Francis*, called, &c. unto the said closes of him the said *T. Reeves*, called, &c. and so back from the said closes of him the said *T. Reeves*, called, &c. in, by and thro' the said closes of him the said *Francis*, called, &c. to the king's highway aforesaid, to pass, repass, ride and ride back, drive and drive back their cattle, and to carry and carry back, draw and draw back their carts and carriages at all times of the year at their wills, as to the said closes of him the said *T. Reeves* belonging and appertaining, as they the said *Thomas, Thomas, &c.* have above alledged: and of this they put themselves on the country: and the said *Francis* likewise: therefore as well to try that issue as the said other issues between the parties aforesaid above joined, the sheriff is commanded, that he cause to come here from the day of

[428]

The poſtea.

Verdict for the
plaintiff as to
first iſſue.And as to the
ſecond.

of the holy *Trinity* in three weeks 12, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. On which day the jury between the parties aforeſaid in the plea aforeſaid was put thereof between them in reſpite here until this day, to wit, from the day of *St. Michael* in three weeks then next enſuing, unleſs the juſtices of the ſaid lord the king aſſigned to take aſſiſes in the county aforeſaid, by the form of the ſtatute, &c. ſhould firſt come on the 31ſt day of *July* laſt paſt at *Maidſtone* in the county aforeſaid: and now here on this day comes the ſaid *Francis* by his attorney aforeſaid: and the ſaid juſtices of aſſiſe before whom, &c. have ſent here their record in theſe words: afterwards the day and year within contained, before *George Treby*, knt. chief juſtice of the lord the king of the bench, and *Henry Harſell*, knt. one of the barons of the exchequer of the ſaid lord the king, juſtices of the ſaid lord the king, aſſigned to take aſſiſes in the county of *Kent*, by the form of the ſtatute, &c. comes the within named *Francis Farnaby*, eſq; by his attorney within contained, and the within written *Thomas Reeves*, *Thomas Billingſby*, (and the other defendants) altho' ſolemnly called, have not come, but have made default; therefore let the jury, whereof mention is within made, be taken againſt them by default; whereupon the jurors of that jury being called, ſome of them, to wit, *William Thompſon*, &c. (reciting nine jurors) have come, and on that jury are ſworn: and becauſe the reſt of the jurors of that jury have not appeared, therefore others from the by-ſtanders by the ſheriff of the county aforeſaid hereto elected, at the requeſt of the ſaid *Francis Farnaby*, and by the command of the juſtices aforeſaid, are added anew, whoſe names to the panel within written are put, according to the form of the ſtatute in ſuch caſe made and provided; and the jurors ſo added anew, to wit, *T. Oliver*, *R. S.* and *R. W.* being called come, who to ſay the truth of the within contained, together with the other jurors aforeſaid firſt impanelled and ſworn, being elected, tried and ſworn, as to the force and arms, and whatever is againſt the peace of the ſaid lord the king, as to the cutting down, taking and carrying away of the oaks, elms and aſhes in the declaration within mentioned, and the digging of the ditch within mentioned in the declaration aforeſaid ſpecified to be in length 17 rods and in breadth 6 feet, in the firſt iſſue between the parties aforeſaid within joined mentioned, ſay on their oath, that the ſaid *Thomas Reeves*, *Thomas Billingſby*, &c. are guilty, in manner and form as the ſaid *Francis Farnaby* within againſt them complains; and they aſſeſs the damages of the ſaid *Francis Farnaby*, by reaſon of that treſpaſs, beſides his coſts and charges by him about his ſuit in this behalf ſuſtained, to 20*s*. And as to the digging of the ditch in the declaration aforeſaid mentioned to contain 40 rods and an half in length and 8 feet in breadth, within pleaded, in the ſecond iſſue between the parties aforeſaid within likewise joined, the jurors aforeſaid farther ſay on their oath, that the ſaid *Francis* did not give leave to the ſaid *Thomas*

Reeves

And as to the
third.

Reeves to dig the same ditch, as the said *Francis* within thereto in replying hath alledged; and they assess the damages of him the said *Francis*, by reason of that trespass in digging of that ditch last mentioned, besides his costs and charges by him about his suit in this behalf sustained, to 4*l*. And as to the breaking of the closes within written of him the said *Francis*, called, &c. and the treading down and consuming of the grass of him the said *Francis* in the same closes growing, with their feet by walking, and eating up, treading down and consuming other grass of him the said *Francis* in the same closes of him the said *Francis* growing, with cattle, and the continuance thereof for the time within written in the declaration aforesaid mentioned, and the subverting the soil of him the said *Francis* there with carts, in the third issue between the parties aforesaid within likewise joined mentioned, the jurors aforesaid farther say on their oath that the said *Thomas Reeves*, and all those whose estate he hath in the said closes of him the said *Thomas Reeves*, called, &c. have not for time immemorial had, nor have been used and accustomed to have, a certain way for their servants, farmers and tenants, as well a foot-way as a horse-way, leading from the king's highway in *Sevenoake* aforesaid, in, by and thro' the said closes of him the said *Francis*, called, &c. unto the said closes of him the said *Thomas Reeves*, called, &c. and so back from the said closes of him the said *Thomas Reeves*, called, &c. in, by and thro' the said closes of him the said *Francis*, called, &c. to the king's highway within mentioned, to pass, repass, ride, ride back, drive and drive back their cattle, and to carry and carry back, draw and draw back their carts and carriages at all times of the year at their will, as to the said closes of him the said *Thomas Reeves* belonging and appertaining, as the said *Francis* within thereof against them complains: and they assess the damages, &c.

[429]

Albe against Cowdale and others.

For breaking
the plaintiff's
thigh.

City of *Coventry*, **J**OH*N* *Albe* complains of *Michael Cowdale*, to wit. *Robert Staples*, *William Dolton* and *Henry Heywood*, being in the custody of the marshal of the *Marshalls* of the lord and lady the king and queen before the king and queen themselves, for this, that they on the 12th day of *January* in the fifth year of the reign of the lord and lady *William* and *Mary*, now king and queen of *England*, &c. with force and arms, &c. on him the said *John*, at the city of *Coventry* aforesaid in the county of the same city, made an assault, and him then and there beat, wounded and ill treated, to wit, by giving him so many and so grievous wounds on the head, arms, hands and thighs of him the said *John*, that they the left thigh of him the said *John* then and there broke, by reason whereof the said *John* became lame in that thigh; and the business of the said *John* happening in the mean time, from the said 12th day of *January* in

in the fifth year abovefaid until the day of the exhibition of this bill, was neglected and remained undone, so that his life was despaired of; and also for this, that they the said *Michael, William, Robert* and *Henry* afterwards, to wit, on the 10th day of *April* in the fifth year abovefaid, with force and arms, &c. on him the said *John* at the city of *Coventry* aforefaid made an assault, and him then and there beat, wounded and ill treated, so that his life was greatly despaired of, and other outrages committed on him, against the peace of the said lord and lady the now king and queen, and to the damage of him the said *John* 100 l. And therefore he produces the suit, &c.

Harding against Wood.

Stafford, **I**T is granted by the court here, that *Jane Harding*, to wit, **I** widow, may prosecute for *Charles Harding*, who is under the age of 21 years, as the next friend of the said *Charles*, against *Peter Wood*, in a plea of trespass and assault. Warrant of attorney for an infant plaintiff.

Stafford, **P***ETER Wood* puts in his place *Peter Cottingham* to wit. his attorney against the said *Charles Harding* in the plea aforefaid. Warrant for the defendant.

Stafford, **B**E it remember'd, that otherwise in *Michaelmas* term to wit. last past before the lady the queen at *Westminster* came *Charles Harding*, who is under the age of 21 years, by *Jane Harding* his next friend, hereto by the court specially admitted, and produced in the court of the said lady the queen then there his certain bill against *Peter Wood* in the custody of the marshal, &c. in a plea of trespass and assault: and there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *Stafford*, to wit, *Charles Harding*, who is under the age of 21 years, by *Jane Harding* his next friend, hereto by the court specially admitted, complains of *Peter Wood* in the custody of the marshal, &c. for this, that he on the first day of *October* in the 6th year of the reign of the lady the now queen, with force and arms, to wit, with swords, staves and knives, on him the said *Charles*, at *Stone*, in the county aforefaid, made an assault, and him beat, wounded and ill treated, so that his life was greatly despaired of; and other outrages on him then and there committed, against the peace of the said lady the now queen, and to the damage of the said *Charles* 40 l. And therefore he produces the suit, &c. For an assault and battery on an infant.

And now on this day, to wit, *Friday* next after the octave of *St. Hilary* in this same term, until which day the said *Peter Wood* had leave to imparl to the bill aforefaid, and then to answer, &c. before the lady the queen at *Westminster* comes as well the said *Charles* by his next friend aforefaid, as the said *Peter Wood* by *Peter Cottingham* his attorney; and the said *Peter Wood* Imparlanee.

[430]

As to the force
and arms and
wounding,
Not guilty.
As to the resi-
due, that E.
was possessed of
a stable and
horses in N. in
another county.
That plaintiff
against the will
of E. entred
therein, dis-
turbed his
horses, and re-
fusing to depart,
defendant as
servant of E.
and in defence
of his master's
possession, mol-
litor maxus im-
posuit, to put
him out.
Quæ sunt resid-
transgr.

Traverse.

*Repl' de injuria
sua pro, ris.*

Wood defends the force and injury when, &c. And as to the force and arms, or any thing that is against the peace of the said lady the now queen, and also the wounding of him the said *Charles*, the said *Peter* says that he is not guilty thereof: and of this he puts himself on the country: and the said *Charles* likewise: and as to the residue of the trespasss and assault aforesaid above supposed to be committed, the same *Peter* says, that the said *Charles* ought not to have or maintain his action aforesaid thereof against him, because he says, that one *Edward Minshull*, esq; long before the said time when the trespasss and assault aforesaid is above supposed to be committed, and also at the said time when, &c. was possessed of a stable in *Nantwich* in the county of *Chester*, in which said stable the same *Edward* at the said time when, &c. kept his horses; and the same *Edward* so being thereof possessed, the said *Charles* at the same time when the trespasss and assault aforesaid is above supposed to be committed, to wit, on the said first day of *October* in the sixth year abovesaid, at *Nantwich* aforesaid into the county aforesaid, into the stable of him the said *Edward*, in and upon the possession of him the said *Edward*, with force and arms, and against the will of him the said *Edward* entred, and him the said *Edward* in the quiet possession thereof disturbed, and certain horses of him the said *Edward* in the stable aforesaid then being disturbed, frightened and startled, whereupon the same *Peter*, then being servant of the said *Edward*, and by the command of the said *Edward* his master, then having the care of the said stable and of the said horses in the said stable, by his order at the said time when, &c. went to the said *Charles*, then being in the said stable, and required him to go out of the same stable, and to do no farther damage in that stable; and the said *Charles* would not then go out of the same stable; wherefore the said *Peter* at the said time when, &c. as servant of the said *Edward*, and in defence of his possession of his stable aforesaid, and of his horses then being in the same stable, and to compel the said *Charles* to go out of that stable, then and there gently laid his hands on the same *Charles*, then being in the same stable, to put him the said *Charles* out of the stable aforesaid, as he lawfully might, which is the same residue of the trespasss and assault aforesaid whereof the said *Charles* above now complains; without that, that the same *Peter* is guilty of the trespasss and assault aforesaid, at *Stone* aforesaid, or elsewhere, out of *Nantwich* aforesaid in the said county of *Chester*: and this he is ready to verify; wherefore he prays judgment if the said *Charles* ought to have or maintain his action aforesaid thereof against him, &c.

And the said *Charles* says, that he by any thing by the said *Peter* above in pleading alledged ought not to be precluded from having his action aforesaid thereof against him, because he says, that the said *Peter* of his own wrong, and without such cause by him the said *Peter* above in pleading alledged, made an assault on him the said *Charles*, and him the said *Charles* beat, wounded and ill

ill treated, in manner and form as the said *Charles* above against him complains : and this he prays may be inquired of by the country : and the said *Peter* likewise, &c. and because the several issues between the parties aforesaid above joined ought to be tried by the men of the county palatine of *Chester*, where the writ of the lady the queen doth not run, and not elsewhere ; therefore let the record of the plea aforesaid be sent to the justices of the said lady the queen of the county of *Chester* aforesaid, so that the same justices, by the writ of the lady the queen of that county duly to be made, cause the sheriff of the same county to be commanded, that he cause to come before the same justices of the said lady the queen of the county of *Chester* aforesaid at the next sessions for that county, after the record aforesaid shall be delivered to them, 12 free and lawful men of the body of the county palatine of *Chester* aforesaid, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. And when the averment and those issues shall be made and tried, that then the said justices do send the record of the plea aforesaid, with all that therein in the court of the said lady the queen there before them shall be done, to the lady the queen at *Westminster* on a certain day which the same justices of the county palatine of *Chester* aforesaid to the parties aforesaid in the same court there shall prefix, to hear thereon their judgment, &c. and the said *Charles* is ordered to prosecute with effect, at the peril, &c.

Suggestion that the issues ought to be tried at *Chester*.

Higgins against Smith and others.

[431]

Warwick, **J**OHN Higgins complains of *Thomas Smith* the younger, *John Dickins* and *Thomas Wooton*, in the custody of the marshal, &c. for this, that the 20th day of *November* in the third year of the reign of the lord and lady *William* and *Mary*, now king and queen of *England*, &c. with force and arms, &c. the close of him the said *John*, called *Cliffe Bank* in the parish of *Alveston* in the county aforesaid, broke and entred, and the grass of him the said *John* in the same close then growing, to the value of 40s. with their feet by walking trod down and consumed, and other outrages on him then and there committed, against the peace of the said lord and lady the now king and queen, and to the damage of him the said *John* 40l. And therefore he produces the suit, &c.

Clausum frogit.

When, &c. and as to the force and arms, or any thing that is against the peace of the lord and lady the now king and queen, say, that they are not guilty thereof : and of this they put themselves on the country : and the said *J. Higgins* thereof likewise, &c. And as to the residue of the trespass aforesaid in the declaration aforesaid above supposed to be committed, the same *Thomas*, *John* and *Thomas* say, that the said *John Higgins* ought not to have or maintain his action aforesaid thereof against them, because they say, that long before the said time when,

Bar, that *G. L.* was seized in fee of a fishery.

&c.

Prescription to
fish with nets.

Ec. and also at the said time when, Ec. one *G. Lucy*, esq; was seised and yet is seised of and in one acre of land covered with water, parcel of a certain river called *Avon* in the parish and county aforesaid, next and contiguous adjoining to the said close of the said *John Higgins* in the declaration aforesaid mentioned, in which, Ec. as also of and in the several fishery in that water in his demesne as of fee; and that he the said *George*, and all those whose estate the said *George* now hath, and at the said time when, Ec. had of and in the said one acre of land covered with water, and the several fishery aforesaid, for time out of mind have been used and accustomed by themselves and their servants from time to time, and at all seasonable times of fishing, the better to catch fish in that several fishery, at their will into the close aforesaid, in which, Ec. to enter, and nets and other engines for the catching of fish in that fishery there near the banks of the water aforesaid to open and draw; wherefore the said *Thomas*, *John* and *Thomas*, as servants of the said *George Lucy*, and by his command, at the said time when, Ec. being a seasonable time for fishing, the better to catch fish in that fishery, into the close aforesaid near the banks of the water aforesaid entred, and there the nets of the said *George Lucy* to catch fish in that fishery being in that water drew, and thereby the grass aforesaid in the same close then growing with their feet by walking trod down and consumed, as they lawfully might, which is the same residue of the trespass aforesaid whereof the said *John Higgins* in that behalf above now complains: and this they are ready to verify: wherefore they pray judgment if the said *John Higgins* ought to have or maintain his action aforesaid thereof against them.

Edw. Northey.

*Bar de injuria
sua propria.*

And the said *John Higgins* says, that he by any thing by the said *Thomas Smith*, *John Dickins*, and *Thomas Wooton*, above in pleading alledged ought not to be precluded from having his action aforesaid thereof against them, because he says, that the said *Thomas*, *John* and *Thomas*, the day and year aforesaid in the declaration aforesaid mentioned, of their own wrong the close aforesaid of him the said *John Higgins* in the declaration aforesaid mentioned broke and entered, and the grass of him the said *John Higgins* in the same close then growing, to the value of 40s. with their feet by walking trod down and consumed, as the said *John Higgins* hath above thereof against them declared; without that, that the said *George Lucy*, and all those whose estate he hath, and at the said time when, Ec. had of and in the said one acre of land covered with water, and the several fishery aforesaid, for time out of mind have been used and accustomed for themselves and their servants from time to time, and at all seasonable times of fishing, the better to catch fish in that several fishery, at their will into the close aforesaid

Traverse of the
prescription.

of

of him the said *John Higgins* to enter, and the nets and other engines for the catching of fish in that fishery there near the banks of the water aforesaid to open and draw, in manner and form as the said *Thomas, John and Thomas*, have above by pleading alledged: and this he is ready to verify: wherefore for that the said *Thomas, John and Thomas*, have above acknowledged the trespass aforesaid, the same *John Higgins* prays judgment, and his damages, by reason of that trespass, to be adjudged to him, &c.

And the said *Thomas, John and Thomas* as before say, that the said *G. Lucy* and all those whose estate the same *George* now hath, and at the said time when, &c. had of and in the said one acre of land covered with water, and the several fishery aforesaid for time out of mind have been used and accustomed by themselves and their servants from time to time, and at all seasonable times of fishing, the better to catch fish in that several fishery, at their will into the close aforesaid of him the said *J. Higgins* to enter, and the nets and other engines for the catching of fish in that fishery there near the banks of the water aforesaid to open and draw, in manner and form as they the said *Thomas, John and Thomas* have above by pleading alledged: and of this they put themselves on the country: and the said *John Higgins* thereof likewise, &c. Therefore let a jury thereon come before the lord and lady the king and queen at *Westminster* on *Monday* next after the octave of the purification of the blessed *Mary*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the proceedings thereof between the parties aforesaid in the plea aforesaid being continued by the jury aforesaid, being put thereof between them in respite before the lord and lady the king and queen at *Westminster* until *Wednesday* next after 15 days of *Easter* thence next ensuing, unless the justices of the lord and lady the king and queen, assigned to take assizes in the county aforesaid, should first come on *Tuesday* the 20th day of *April* in the year aforesaid, at *Warwick* in the county aforesaid, by the form of the statute, &c. for want of jurors, &c. On which day before the lord and lady the king and queen at *Westminster* come as well the said *John Higgins* as the said *Thomas, John and Thomas* by their attornies aforesaid: and the said justices of the lord and lady the king and queen of assize, before whom, &c. have sent here their record before them had in these words, to wit, afterwards the day and year within contained, before *E. N. knt.* one of the justices of the lord and lady the king and queen of the bench, and *G. D. esq;* to the same *E. N.* and *W. G. knt.* one of the justices of the said lord and lady the king and queen, assigned to hold pleas before the king and queen themselves, justices of the said lord and lady the king and queen, assigned to take assizes in the county of *Warwick*, by the form of the statute, &c. for this time associated, the presence of the said *W. G.* being not expected,

VOL. II.

L

by

[432]

Rejoinder and
issue on the tra-
verse.

The postea.

13 E. 1. c. 30.
12 E. 2. c. 4.
14 E. 3. c. 16.

Special verdict.

by virtue of the writ of the said lord and lady the king and queen of *si non omnes*, &c. come as well the said *J. H.* as the within written *T. J.* and *T.* by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called likewise come, who to say the truth of the within contained, being elected, tried and sworn, say on their oath, that the close within written of the said *J. Higgins*, called *Cliffe Bank* within mentioned, is, and for time out of mind was, parcel of the manor of *Alveston* in the county of *Warwick*; the within written one acre of land of the said *G. Lucy* covered with water, pareel of the said river called *Avon* in the parish of *Alveston* within written within mentioned, is, and for time out of mind was, parcel of the manor of *Bisbop Hampton* in the county of *Warwick* aforesaid; and that long before the within written time when, &c. the lord *Edward* the Sixth, late king of *England* was seised of and in the manors of *Alveston* and *Bisbop Hampton* aforesaid, and of and in the said close in which, &c. called *Cliffe Bank*, and of and in one acre of land covered with water, parcel of the said river called *Avon*, together with the several fishery in that water, in his demesne as of fee in the right of his crown of *England*; and being so thereof seised, of such his estate died thereof seised; after whose death the manors of *Alveston* and *Bisbop Hampton* aforesaid with the appurtenances, and also the said place in which, &c. and the said one acre of land covered with water, and the several fishery aforesaid, descended to the lady *Mary*, late queen of *England*, as sister and heir of the said late king *Edward* the Sixth, whereby the same late queen was seised of the manors aforesaid with the appurtenances, and also of the said place in which, &c. and of the said one acre of land covered with water, and the several fishery aforesaid, in her demesne as of fee in the right of her crown of *England*; and being so thereof seised, the lord *Philip* and the said lady *Mary*, then king and queen of *England*, by their letters patent sealed under the great seal of *England*, bearing date at *Westminster* the 12th day of *June* in the 3d and 4th year of their reign, gave and granted to one *J. L.* esq; among other things, the manor of *Bisbop Hampton* aforesaid, and also the said one acre of land covered with water, together with the several fishery in the water aforesaid, and all lands, tenements, meadows, pastures, moors, marshes, waters, fisheries and court-lects, with all and singular rights, profits, commodities and advantages, to the said manor howsoever belonging; to have and to hold to the said *T. Lucy*, his heirs and assigns for ever: by virtue whereof the said *T. Lucy* into the manor aforesaid with the appurtenances, and into the said acre of land covered with water, and the several fishery aforesaid, entred, and was thereof seised in his demesne as of fee; and being so thereof seised died; and that that manor and the said one acre of land covered with water, and the several fishery aforesaid, by several descents from the said *T. Lucy* descended by hereditary right to the said

G. Lucy

[433]

G. Lucy in the plea within written mentioned, whereby the said *G. Lucy* is now seised of and in the manor of *Bishop Hampton* afore said with the appurtenances, whereof the said acre of land covered with water with the appurtenances, and the several fishery afore said, is parcel, in his demesne as of fee: and the jurors afore said on their oath afore said farther say, that the said lady *Mary*, late queen of *England*, of the said manor of *Alveston* as afore said, being seised in her demesne as of fee in the right of her crown of *England*, of such her estate thereof died seised; after whose death the manor of *Alveston* afore said with the appurtenances descended to the lady *Elizabeth*, late queen of *England*, as sister and heir of the said lady *Mary*, late queen of *England*, whereby the same lady *Elizabeth*, late queen of *England*, was seised of the manor of *Alveston* afore said with the appurtenances in her demesne as of fee in the right of her crown of *England*; and being so thereof seised, the same lady *Elizabeth*, then queen of *England*, by her letters patent sealed under the great seal of *England*, bearing date at *Westminster* the 4th day of *April* in the 4th year of her reign, of her special grace, certain knowledge and mere motion, gave and granted to *E. W.* and *R. B.* gent. among other things, the manor of *Alveston* afore said with the appurtenances in the said county of *Warwick*, and all lands, tenements, meadows, fisheries, pastures, woods, underwoods, rents, reversions, services and other hereditaments whatsoever with the appurtenances to the said manor belonging or appertaining; to have and to hold to the said *E. W.* and *R. B.* their heirs and assigns for ever: by virtue whereof they the said *E. W.* and *R. B.* into the manor of *Alveston* afore said with the appurtenances entred, and were thereof seised in their demesne as of fee: and the jurors afore said on their oath afore said farther say, that the estate of them the said *E. W.* and *R. B.* of and in the said close called *Cliffe Bank*, being the said place in which, &c. and parcel of the manor of *Alveston* afore said with the appurtenances, by several legal conveyances long before the said time when, &c. came to one *T. Peers*, esq; and his heirs: by virtue whereof the said *T. Peers* into the close afore said called *Cliffe Bank*, being the said place in which, &c. with the appurtenances entred, and was and yet is thereof seised in his demesne as of fee: and so being thereof seised, he the said *T. Peers* before the said time when, &c. to wit, on the first day of *November* in the third year of the reign of the lord and lady the now king and queen, demised to the said *John Higgins* the close afore said, called *Cliffe Bank*; to have and to hold to the same *John* and his assigns from the feast-day of *St. Michael* the archangel then last past unto the full end and term of one year from thence next ensuing, and so from year to year as long as both parties should please: and that by virtue of the demise afore said the said *John Higgins* afterwards, to wit, on the 6th day of *November* in the said third year of the reign of the said lord and lady the king and queen

into the close aforesaid called *Cliffe Bank* with the appurtenances entred, and was and is yet thereof possessed: and the jurors aforesaid on their oath aforesaid farther say, that for time out of mind the said *G. Lucy*, and all those whose estate the same *George* now has, and at the said time when, &c. had of and in the said one acre of land covered with water, and the several fishery aforesaid, for time out of mind have been used and accustomed by themselves and their servants from time to time, and at all seasonable times of fishing, the better to catch fish in the several fishery aforesaid, at their will into the close aforesaid called *Cliffe Bank* in which, &c. to enter, and the nets and other engines to catch fish in that fishery there near the banks of the water aforesaid to open and draw, as the said *Thomas, John and Thomas* have above for themselves by pleading alledged: but whether on the whole matter aforesaid by the jurors aforesaid in form aforesaid found, the liberty of entring into the said close called *Cliffe Bank* in which, &c. and the nets and other engines for the catching of fish in that fishery there of opening and drawing for the better catching of fish be in law extinguished, by reason of the said unity of possession so as aforesaid found or not, the jurors aforesaid are wholly ignorant, and thereof pray the advice and consideration of the court here: and if upon the whole matter aforesaid by the jurors aforesaid in form aforesaid found, it shall appear to the court of the lord and lady the king and queen now here, that the said liberty of entring into the close aforesaid called *Cliffe Bank* in which, &c. and the nets and other engines for the catching of fish in that fishery there of opening and drawing for the better fishing, be in law extinguished by reason of the unity of possession so as aforesaid found, then the same jurors say on their oath, that they the said *Thomas, John and Thomas* are guilty of the trespass aforesaid in the declaration aforesaid mentioned, in manner and form as the said *John Higgins* within against them thereof complains; and they assies the damages of him the said *John Higgins* by reason thereof, besides his costs and charges by him about his suit in this behalf expended, to 12 *d.* and for those costs and charges to 53 *s.* 4 *d.* But if on the whole matter aforesaid by the jurors aforesaid in form aforesaid found it shall appear to the court of the said lord and lady the king and queen now here, that the said liberty of entring into the said close called *Cliffe Bank* in which, &c. and the nets and other engines for the catching of fish in that fishery there of opening and drawing for the better fishing, be not in law extinguished by reason of the unity of possession aforesaid so as aforesaid found: then the same jurors on their oath aforesaid farther say, that they the said *T. J. and T.* are not guilty of the trespass aforesaid in the declaration aforesaid mentioned, in manner and form as the said *J. H.* within against them complains: and because the court of the said lord and lady the king and queen now here are not yet advised to give their judgment of and upon the premises, day therefore is given to the

the parties aforesaid before the lord and lady the king and queen at *Westminster* until *Friday* next after the morrow of the holy *Trinity* to hear their judgment thereon, because the court of the said lord and lady the king and queen here thereof not yet, &c. On which day before the lord and lady the king and queen at *Westminster* come the parties aforesaid by their attornies aforesaid: and because the court of the said lord and lady the king and queen now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord and lady the king and queen at *Westminster* until *Tuesday* next after 15 days of *St. Martin* to hear their judgment thereon, because the court of the said lord and lady the king and queen now here thereof not yet, &c. On which day before the lord and lady the king and queen at *Westminster* come the parties aforesaid by their attornies aforesaid: whereupon all and singular the premisses being seen, and by the court of the said lord and lady the king and queen now here more fully understood, and mature deliberation being thereon had, it appears to the court of the said lord and lady the king and queen now here, that the said liberty of entering into the said close called *Cliffe Bank* in which &c. and the nets and other engines for the catching of fish in that fishery there of opening and drawing for the better fishing is in law extinguished, by reason of the unity of possession aforesaid: therefore it is considered, that the said *John Higgins* do recover against the said *Thomas Smith* the younger, *John Dickins* and *Thomas Wootton*, the damages aforesaid, by the jurors aforesaid in form aforesaid assessed, and also 21 l. for his costs and charges aforesaid to the same *John Higgins* by the court of the said lord and lady the king and queen now here, by his assent, of increase adjudged; which said damages in the whole amount to 23 l. 14 s. 4 d.

Judgment for
the plaintiff.

Scott against Burgefs.

Wilts, **RICHARD** Burgefs late of *Christian Malford* in the county aforesaid, druggert-maker, was attached to answer to *William Scott* in a plea, why with force and arms on *Mary* the wife of him the said *William*, at *Christian Malford* aforesaid, he made an assault, and her the said *Mary* ravished; lay with and carnally knew, and from the house of the said *William* took with him; whereby the said *William* lost and was deprived of the comfort and company of his wife aforesaid; and other outrages committed on her, to the great damage of him the said *William*, and against the peace of the lord the now king, &c. And whereon the said *William* by *William Mathews* his attorney complains, that the said *Richard* on the first day of *June* in the third year of the reign of the lord the now king, and at divers other days and times between that day and the second day of *October* in the fifth year of the reign of the said lord the now king, with force and arms, &c. on the said *Mary*, the wife

Trespals for ly-
ing with the
plaintiff's wife,

of him the said *William*, at *Christian Malford* aforefaid did make an assault, and her the said *Mary* did there ravish, lie with and carnally know, and from the house of him the said *William* there did take with him, whereby the said *William* lost and was deprived of the comfort and company of his said wife; and other outrages, &c. to the great damage, &c. and against the peace, &c. whereby he says that he is prejudiced, and hath damage to the value of 1000 l. And therefore he produces the suit, &c.

On not guilty pleaded, the plaintiff obtained a verdict for 400 l.

[435]

Barnjum against Niccolson.

Trespafs for
treading down
and eating up
his grass and
taking his cows.

Middlesex, *THOMAS Barnjum* complains of *William Niccolson* to wit. *son* in the custody of the marshal, &c. for this, that he the said *William* on the 20th day of *October* in the year of the Lord 1712, with force and arms, &c. the close of him the said *Thomas*, called the *Ten Acres*, at *Islington* in the county aforefaid, did break and enter, and his grass to the value of 20 l. then and there growing with his feet by walking did tread down and consume, and other grass of him the said *Thomas* in the same close then likewise growing, to the value of other 20 l. with certain cattle, to wit, horses, oxen, cows, hogs and sheep, did tread down, eat up and destroy, the trespafs aforefaid, as to the eating up, treading down and destroying of the grass aforefaid with the cattle aforefaid, from the said 20th day of *October* in the year of the Lord 1712 abovefaid until the 13th day of *June* in the year of the Lord 1714, at sundry days and times continuing; and also for this, that he the said *William* on the 21st day of *May* in the year of the Lord last abovefaid, with force and arms, &c. three cows of him the said *Thomas*, at *Islington* aforefaid in the county aforefaid found, did take and carry away, and those cows for the space of three days did keep and detain, until the said *Thomas* a fine of five shillings with the said *William* to have a delivery of the said cows had made; and other outrages on him then and there did commit, against the peace of the said lady the now queen, and to the damage of the said *Thomas* 30 l. And therefore he produces the suit, &c.

As to part,
Not guilty.

And the said *William* by *J. A.* his attorney comes and defends the force and injury when, &c. and as to the force and arms, and also the whole trespafs aforefaid in the declaration aforefaid above mentioned, by him the said *William* above supposed to be committed, except the taking and carrying away of the said three cows of him the said *Thomas*, and the keeping and detaining of those cows for the space of one day of the said three days in the declaration aforefaid above mentioned until the said *Thomas* did pay to the said *William* five shillings, the said *William* says that he is not guilty thereof: and of this he puts himself on the country;

try: and the said *Thomas* thereof likewise: and as to the taking and carrying away of the said three cows, and the keeping and detaining of those cows for the space of one day of the said three days, the same *William* says, that the said *Thomas* ought not to have or maintain his action aforesaid thereof against him, because he says, that he the said *William* before the said time when, &c. and also at the said time when, &c. and ever after hitherto was possessed, and yet is possessed for the term of divers years then and yet to come, of and in a certain close, containing by estimation four acres of pasture with the appurtenances, situate and being in *Issington* aforesaid in the county aforesaid: and because the said three cows at the said time when, &c. were in the said close of him the said *William* eating up the grafs there in the same close then growing, and doing damage there, the same *William* the said three cows at the said time when, &c. being then and there as aforesaid in the said close of him the said *William* so doing damage, in the name of a distress did take and gently drive, and them in the said close of him the said *William* at *Issington* aforesaid did impound, and of the said impounding of the cows aforesaid of him the said *Thomas* in the said close of him the said *William*, the same *William* afterwards, to wit, on the 22d day of *May* in the year of the Lord 1714 aforesaid, did give notice to the said *Thomas* at *Issington* aforesaid; and the same *William* the said three cows of the said *Thomas* in the said close of him the said *William* there by the said *Thomas* being not replevied for satisfaction for the trespass aforesaid by the said cows as aforesaid done, for the said space of one day did detain, as he lawfully might, until the said *Thomas* voluntarily paid to the same *William* the said 5*s.* for and in full satisfaction of the trespass aforesaid by the said cows of the said *Thomas* done as aforesaid; and the same *William* the said 5*s.* in full satisfaction for the damages aforesaid then and there, to wit, at *Issington* aforesaid had and received, and upon the receipt thereof the said three cows of the said *Thomas* at *Issington* aforesaid did deliver; which said taking, driving and impounding of the said three cows, and the impounding and detaining of those cows in the said close of him the said *William* for the time aforesaid by him the said *William* in form aforesaid, and for the cause aforesaid done, are the same taking, carrying away, impounding, and in pound keeping and detaining of the said three cows for the space of one day of the said three days whereof the said *Thomas* above against him complains: and this he is ready to verify: wherefore he prays judgment if the said *Thomas* ought to have or maintain his action aforesaid thereof against him, &c.

As to the rest he justifies by a distress for damage-feasant.

Notice.

William Hall.

Owen against Hughes.

Declaration delivered against a prisoner in pursuance of 4 & 5 W. & M. c. 21, Pract. Reg. 231, 359, 366, 596, 602.

Middlesex, **E** **EDWARD** O. gent. complains of *Hugh H.* gent. to wit. in the custody of the sheriff of the county of *Middlesex*, by virtue of a precept of the lady the queen, called a bill of *Middlesex*, issuing out of the court of the said lady the queen, for this, that he the said *Hugh* on the 24th day of *August* in the 12th year of the reign of the lady *Anne*, now queen of *Great Britain*, &c. with force and arms, &c. on him the said *Edward* at *Hampstead* in the county aforesaid did make an assault, and him the said *Edward* did then and there beat, wound and ill treat, so that his life was greatly despaired of; and other outrages on him then and there committed, against the peace of the said lady the now queen, and to the damage of him the said *Edward* 100 l. And therefore he produces the suit, &c.

<i>A. B.</i>, for the plaintiff The defendant in the custody of the she- riff of the county a- foresaid.	}	Pledges to pro- secute,	{	<i>John Doe</i>, and <i>Richard Roe</i>,
---	---	------------------------------------	---	---

In the queen's bench, { Between *E. O.* plaintiff,
and
H. H. defendant.

The affidavit of the delivery thereof.

H. P. of the parish of gent. maketh oath, That he this deponent did deliver a copy of the declaration hereunto annexed to the turnkey of *Newgate* against the defendant *Hughes* in custody, on the four and twentieth day of *October* last past. And this deponent has since been informed by one of the keepers of the said prison, that he did the same day deliver the said declaration to the said defendant *Hughes*.

Examined with the oath filed 4 November 1713.

The rule to plead.

Wednesday in the feast of *St. Martin* to appear and plead peremptorily. Enter'd.

Beacher against Perkins.

Declaration in C. B. for false imprisonment.

Suffex, **J** **JOHN** Perkins late of *Horsham* in the county aforesaid, to wit. said, yeoman, was attached to answer to *Robert Beacher* in a plea, why with force and arms on him the said *Robert Beacher* at *Horsham* he made an assault, and beat, wounded, imprisoned and ill treated him, and him there in prison, without any reasonable cause, and against the law and custom of this kingdom of *England*, for a long time detained; whereby the said

said *Robert* expended and laid out, and was obliged and compelled to expend and lay out, several large sums of money for his deliverance from the imprisonment aforesaid; and other outrages committed on him, to the great damage of him the said *Robert*, and against the peace of the lady the now queen, &c. And whereon the said *Robert* by *T. W.* his attorney complains, that the said *John* on the 10th day of *January* in the 9th year of the reign of the lady *Anne*, now queen of *Great Britain*, &c. at *Horsham* in the county aforesaid, with force and arms, to wit, with swords, staves and knives on him the said *Robert* at *Horsham* aforesaid did make an assault, and him the said *Robert* did then and there beat, wound, imprison and ill treat, and him the said *Robert* there in prison, without any reasonable cause, and against the law and custom of this kingdom of *England*, a long time to wit, for the space of 14 days from thence next ensuing did detain, until the same *Robert* expended and laid out, and was obliged and compelled to expend and lay out, several large sums of money for his deliverance from the arrest and imprisonment aforesaid; and other outrages, &c. to the great damage, &c. and against the peace, &c. whereby he says that he is prejudiced, and hath damage to the value of 100 *l.* And therefore he produces the suit, &c.

And the said *John Perkins* by *Artbur Rowland* his attorney comes and defends the force and injury when, &c. and says, that he is not guilty of the trespass aforesaid, as the said *Robert Beacher* above against him complains: and of this he puts himself on the country: and the said *Robert* likewise: therefore the sheriff is commanded, that he cause to come here 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

[437]

Not guilty.
1 Saund. 80.

AND the said *Thomas* says, that he by any thing before alledged ought not to be precluded from having his action aforesaid, because he says, that the house, garden and several closes aforesaid, and also the place in which the trespass aforesaid whereof he now complains was committed, are and at the time of that trespass committed were a house called *Colliers* with the garden thereto belonging, and two closes called *Colliers Closes*, containing by estimation two acres, lying in *Postlade* aforesaid, other than the said messuage called the *Charthouse* with the garden thereto belonging, and 20 acres of land and pasture with the appurtenances called the *Blackcroft*, and 10 acres of land called the *Whitcroft* with the appurtenances in *Postlade* aforesaid in the bar of the said *Abraham* above specified: and this he is ready to verify: wherefore for that the said *Abraham* to the trespass aforesaid in the said house, garden, and several closes aforesaid assigned anew committed hath not above answer'd, the same *Thomas* prays judgment, and his damages by reason of that trespass, to be adjudged to him, &c.

New assignment.

And

Not guilty
thereto.

And the said *Abraham* as to any trespass in the said house, garden and several closes by the said *Thomas Smith* assigned anew above supposed to be committed says, that he is not guilty thereof: and of this he puts himself on the country: and the said *Thomas* thereof likewise, &c. Therefore let a jury thereon come, &c.

Hill. 36 & 37 C. 2. Roll. 1157. K. B.

The declaration
in K. B. where
freehold is
pleaded in the
county-court.

Kent, *A. B.* lately in the county-court of *C. D.* kn. sheriff to wit. *A.* of the county aforesaid, held at *M.* in the county aforesaid, complained against *E. F.* in a plea of trespass; which said plaint, at the petition of the plaintiff, is removed hither this day, to wit, from the day of *Easter* in 15 days by the writ of the lord the king of *recordari facias loquelam*, because the said defendant in his plea in that county-court hath pleaded freehold; and now on this day comes as well the said plaintiff by *John Lilly* his attorney, as the said defendant by *R. S.* his attorney: and upon this the same plaintiff by his attorney aforesaid complains, that (*here insert your declaration.*)

Darrell and Wither.

For taking away
hay set out for
tithe.

Southampton, *NICHOLAS* Darrell, esq; complains of *William Wither*, *Matthew Pryor* and *James Pocock*, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for this, that they the said *William*, &c. on the 2d day of *September* in the 25th year, &c. 100 loads of clover grafs hay of him the said *Nicholas* to the value of 50 *l.* being in cocks at *K.* in the county aforesaid, being for tithes, from the nine parts there divided and set out did then and there take and carry away, and other injuries to him then and there did, against the peace of the said lord, the now king, to the damage of the said *Nicholas* 100 *l.* And therefore he produces the suit, &c.

[438]

Leving and Good.

For breaking
his closes, de-
stroying his
grafs with cat-
tle, digging up
and taking away
his coals.

Warwick, *FRANCIS* Leving, gent. complains of *S. G. M. B. T. B. D. W.* and *E. S.* the younger, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for this, that they the said *S. M. T. D.* and *E.* on the first day of *May* in the 32d year of the reign of the lord *Charles* the Second, now king of *England*, &c. with force and arms, &c. the closes of him the said *Francis*, called *Mill-lane* and *Green-lane* in *Baddesty Enfor* in the county of *Warwick* aforesaid, did break and enter, and the grafs of him the said *Francis*, to the value of 60 *s.* in the closes aforesaid then growing with their cattle, to wit, horses, oxen, cows, hogs and sheep, did eat up, tread down and destroy, and also 300 cart loads

loads of coals of him the said *F.* to the value of 100 *l.* then and there found did take and carry away; and also for this, that they the said *S. M. T. D.* and *E.* afterwards, to wit, the same day and year abovesaid with force and arms, &c. the closes abovesaid of him the said *Francis*, called *Mill-lane* and *Green-lane* in *Baddesty Enfor* abovesaid in the county abovesaid, did break and enter, and other grafs of him the said *Francis*, to the value of 40 *s.* then there growing, with their cattle, to wit, horses, oxen, cows, hogs and sheep, did eat up, tread down and destroy, and the soil of him the said *Francis*, to wit, six acres in the close abovesaid called *Green-lane* did dig up, and 40 cart loads of coals of him the said *Francis*, to the value of 120 *l.* from thence did dig out, take and carry away, and his soil in the closes abovesaid with carts and wains did subvert, and other injuries to him then and there did, against the peace of the said lord the now king, and to the damage of him the said *Francis* 300 *l.* And therefore he produces the suit, &c.

When, &c. And as to the force and arms, or any thing that is against the peace of the said lord the now king, and also the whole trespass abovesaid in the declaration abovesaid above supposed to be done, except the breaking and entering of the close abovesaid, called *Green-lane* in the declaration abovesaid above mentioned, and the eating up, treading down and destroying of the grafs abovesaid there with their feet by walking, and with the several cattle abovesaid, and the subverting of the soil abovesaid in the same close with their carts and wains, say, that they are not guilty thereof: and of this they put themselves on the country: and the said *Francis* likewise, &c. And as to the breaking and entering of the close abovesaid, called *Green-lane*, in the declaration abovesaid above mentioned, and the eating up, treading down and destroying of the grafs there with their feet by walking, and with the several cattle abovesaid, and the subverting of the soil abovesaid in the same close with their carts and wains, the same *S. M. T. D.* and *E.* say, that the said *Francis* ought not to have or maintain his action abovesaid thereof against them, because they say, that in, by and thro' the close abovesaid, called *Green-lane*, in which, &c. there is, and at the said times when the trespass abovesaid is supposed to be committed in the same close, and likewise for time out of mind was, a certain common highway for all the subjects of the lord the king, as well horse as foot, at all times of the year by that way with their carts and wains passing or willing to pass; wherefore the said *S. M. T. D.* being subjects of the lord the king, in the close abovesaid called *Green-lane* in which, &c. at the said times when, &c. did enter, and there by that way walk and ride, and all manner of cattle, to wit, their horses, oxen, cows, hogs and sheep, and their several carts and wains drive in, by and thro' the close abovesaid in which, &c. by the way abovesaid, as they lawfully might, and by that means the grafs abovesaid in the same close growing in the way abovesaid they did with their feet by walking tread

As to part
Not guilty.

And as to the
residue, that
the place where
is a common
highway, &c.

tread down and consume, and their horses and oxen drawing their carts and wains as aforefaid in their paffage in, by and thro' that clofe, the faid grafs haftily and by fnatches, againft the will of them the faid *S. M. &c.* did eat up, tread down, de- ftroy and fubvert, which is the fame trespafs as to the breaking and entering of the clofe aforefaid, called *Green-lane*, and the eating up, treading down and destroying the grafs aforefaid there with their feet by walking, with the feveral cattle afore- faid, and the fubverting of the foil aforefaid there with their carts and wains whereof the faid *Francis* above againft them com- plains: and this they are ready to verify: wherefore they pray judgment if the faid *Francis* ought to have or maintain his ac- tion aforefaid thereof againft them, &c.

Repl' de injuria
fua propria.

[439]

Traverse of the
the way.

Issue on the
traverse.

And the faid *Francis* fays, that he by any thing by them the faid *S. M. &c.* above in pleading alledged ought not to be pre- cluded from having his action aforefaid thereof againft them, be- cause he fays, that they the faid *S. M. &c.* the day and year above- faid in the declaration aforefaid above mentioned, of their own wrong with force and arms, &c. the clofe aforefaid of him the faid *Francis*, called *Green-lane*, in the declaration aforefaid above mentioned, at *Baddefly Enfor* aforefaid in the county aforefaid, did break and enter, and the grafs of the faid *Francis*, to the value of 40*s.* there growing with their feet by walking did tread down and destroy, and alfo other grafs of him the faid *Francis*, to the value of 60*s.* in the fame clofe then growing with their cattle, to wit, horses, oxen, cows and fheep, did eat up, tread down and destroy, and alfo other grafs of him the faid *Francis*, to the value of 40*s.* in the fame clofe then growing with their other cattle, to wit, horses, oxen, cows, hogs and fheep, did eat up, tread down and destroy, and the foil of the fame clofe with their carts and wains did fubvert, in manner and form as he the faid *Francis* above againft them the faid *S. M. &c.* there- of complains; without that, that there now is, and at the faid times of the trespafs aforefaid, and likewise for time out of mind was, in the faid clofe called *Green-lane* in the declaration aforefaid mentioned, a common highway for all the fubjects of the faid lord the king, as well horfe as foot, at all times of the year by that way with their carts and wains paffing or willing to pafs, in manner and form as they the faid *S. M. &c.* have above thereof in pleading alledged: and this he is ready to verify: wherefore for that the faid *S. M. &c.* the breaking and entering of the faid clofe called *Green-lane* in the declaration aforefaid mentioned, and the eating up, treading down and destroying of the grafs aforefaid, there with their feet by walking and with the feveral cattle aforefaid and the fubverting of the foil aforefaid with the carts and wains aforefaid above committed have acknowledg- ed, the fame *Francis* prays judgment, and his damages by rea- fon of the trespafs aforefaid, to be adjudged to him, &c.

And the faid *S. M. T. D. and E.* as before fay, that there now is, and at the faid times of the trespafs aforefaid, and alfo for time out of mind was, in the faid clofe called *Green-lane* in the

the declaration aforesaid above mentioned, a common highway for all the subjects of the said lord the king, as well horse as foot, at all times of the year by that way with their carts and wains passing or willing to pass, in manner and form as they the said *S. M. &c.* have above thereof in pleading alledged: and of this they put themselves on the country: and the said *Francis* likewise, &c. Therefore as well to try that issue as the said other issue between the parties aforesaid above joined, let a jury thereon come before the lord the king at *Westminster* on _____ day next after _____ and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid, &c.

Graham and Harrod.

Middlesex, *William Graham* complains of *Randal Harrod*, to wit, being in the custody of the marshal of the *Marsbalsea* of the lord the king before the king himself, for this, that he the said *Randal* on the 10th day of *June* in the 31st year of the reign of the lord *Charles* the Second, now king of *England*, with force and arms, &c. the house of him the said *William*, at the parish of *Islington* in the county of *Middlesex*, did break and enter, and also the close of him the said *William*, called *Rosemary Branch*, at *Islington* aforesaid in the county aforesaid, did likewise break and enter, and the grafs in the close aforesaid growing, and being then and there with his cattle, to wit, horses, oxen, cows, hogs and sheep, did eat up, tread down and destroy, the trespass aforesaid as to the eating up, treading down and destroying of the grafs aforesaid, with the cattle aforesaid, from the said 10th day of *June* in the year aforesaid, at sundry days and times continuing, and other outrages on him then and there committed, against the peace of the said lord the king, and to the damage of him the said *William Graham* 20 l. And therefore he produces the suit, &c.

For breaking and entering the plaintiff's house and close, &c.

And the said *Randal* by *J. L.* his attorney comes and defends the force and injury when, &c. and as to the force and arms, or any thing that is against the peace of the said lord the now king, and likewise the whole trespass aforesaid, except the entring into the house aforesaid, the breaking and entring of the close aforesaid, called *Rosemary Branch*, and the eating up, treading down and destroying of the grafs of him the said *William* there with the cattle aforesaid, the same *Randal* says, that he is not guilty thereof: and of this he puts himself on the country: and the said *William* thereof likewise, &c. And as to the entring of the house aforesaid the same *Randal* says, that the said *William* ought not to have or maintain his action aforesaid thereof against him, because he says, that the house of the said *W.* at the said time when, &c. and long before and continually afterwards hitherto was a common victualling house, wherefore the said *R.* at the said time when, &c. into the house aforesaid did enter, the door

As to part Not guilty.

As to the entering of the house, that it was a common alchouse, &c.

[440]

As to the residue
satisfaction
made.

door of the said house being then open, to buy and drink beer, and beer then in the same house of the said plaintiff did buy, and then in the same house did pay the plaintiff for it, and a pot of beer did drink, as he lawfully might; which said entring of the house aforesaid is the same breaking and entring of the house aforesaid whereof the said *William* above complains: and as to the breaking and entring of the close aforesaid of him the said *William*, called *Rosemary Branch*, and the eating up, treading down and destroying of the grafs of him the said *William* there with the cattle aforesaid, the same *Randal* says, that the said *William* ought not to have or maintain his action aforesaid thereof against him, because he says, that after the trespass aforesaid committed, and long before the exhibition of the bill aforesaid of him the said *William* against the said *Randal* in the court here, to wit, on the 22d day of *January* in the 31st year of the reign of the said lord the now king, he the said *Randal*, at *Islington* aforesaid in the county aforesaid, gave and paid to the said plaintiff one shilling in full satisfaction of the trespass aforesaid in the close aforesaid with the cattle aforesaid committed; which said one shilling the said plaintiff of the said defendant then and there received: and this he is ready to verify: wherefore he prays judgment, &c.

Berkley and Man.

Declaration by
an infant for a
battery on his
servant.

The city of *Bristol*, *GEORGE Berkley*, esq; who is under to wit. the age of 21 years, to wit, of the age of 17 years, by *Henry Symes*, esq; his prochein amy, complains of *Robert Man* in the custody of the marshal, &c. for this, that he on the first day of *November* in the 32d year of the reign of the lord *Charles* the Second, now king of *England*, &c. with force and arms, &c. on one *Richard Lawford*, then and yet being the servant of him the said *George*, at the city of *Bristol* in the county of the same city, did make an assault, and him the said *Richard* did then and there beat, wound and maltreat, so that his life was despaired of, whereby the same *George* the whole service of the said *Richard* his servant aforesaid then and for the space of one month from thence ensuing intirely lost, and was deprived of; whereby the same *George* says that he is prejudiced, and hath damage to the value of 20 l. And therefore he produces the suit, &c.

Not guilty.

Newton against Creswick.

For cutting
down his trees
and taking
away 6 loads of
wood.

Gloucester, *JOHN Newton*, bart. complains of *Francis Creswick*, esq; *William Gay*, *John Mayo* and *William Bigg*, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for this, that they on the 6th day of *April* in the 33d year of the reign of the lord *Charles*

Charles the Second, now king of *England*, &c. with force and arms, &c. the close of him the said *John*, called the *Lane*, at *Hannam* in the parish of *Bitton* in the county aforesaid, did break and enter, and six trees of him the said *John*, to the value of 6 *l.* of lawful money of *England*, in the said close of him the said *John* growing, did cut down, lop, take and carry away, and also six cart loads of wood of him the said *John*, to the value of 5 *l.* at the parish of *Bitton* aforesaid in the county aforesaid did take, carry away, and to their own proper use convert, and other outrages on him did then and there commit, against the peace of the said lord the now king, and to the damage of him the said *John* 20 *l.* And therefore he produces the suit, &c.

When, &c. and as to the force and arms, or any thing that is against the peace of the said lord the now king, and also the whole trespass aforesaid, except the breaking and entering of the close aforesaid, and the cutting down, lopping, taking and carrying away of the trees aforesaid, say, that they are not guilty thereof: and of this they put themselves on the country: and the said *John Newton* likewise, &c. And as to the breaking and entering of the close aforesaid, and cutting down, lopping, taking and carrying away of the trees aforesaid, the said *Francis* and *William Gay*, *John Mayo* and *William Biggs* say, that the said *John Newton* ought not to have or maintain his action aforesaid thereof against them, because they say, that the close aforesaid in which that trespass is supposed to be committed contains in itself 50 acres of pasture with the appurtenances; which said 50 acres of pasture with the appurtenances are, and at the said time when, &c. were the soil and freehold of the said *Francis Creswick*; wherefore the said *Francis Creswick* in his own right, and the said *William Gay*, *John Mayo* and *William Biggs*, as servants of him the said *Francis*, and by his command, at the said time when, &c. the close aforesaid, as the close and soil and freehold of the said *Francis*, broke and entred, and the trees aforesaid in the declaration aforesaid above specified in the said close then growing cut down, lopped, took and carried away, as they lawfully might: and this they are ready to verify: wherefore they pray judgment if the said *John Newton* ought to have or maintain his action aforesaid thereof against them, &c.

And the said *John Newton* says, that he by any thing by the said *Francis*, *William Gay*, *John Mayo* and *William Biggs*, above in pleading alledged, ought to be precluded from having his action aforesaid thereof against them, because he says, that the said place in which, &c. the trespass aforesaid above was committed, at the said time when the same trespass was committed, was the soil and freehold of the said *John Newton* without that, that the said place in which, &c. at the said time when, &c. was the soil and freehold of the said *Francis Creswick*, as they the said *Francis*, *William*, *John Mayo* and *William* have above in pleading alledged: and this he is ready to verify: wherefore he prays judgment,

As to part
Not guilty.

As to the rest
they justify as
their freehold.

[441]

Repl' that it is
the plaintiff's
freehold.

Traverse,

Issue on the
traverse.

judgment, and his damages by reason of that trespass, to be adjudged to him, &c.

And the said *Francis, William, John Mayo* and *William* as before say, that the place in which, &c. at the said time when, &c. was the soil and freehold of him the said *Francis*, in manner and form as they the said *Francis, William, John Mayo* and *William* have above thereof in pleading alledged: and of this they put themselves on the country: and the said *John Newton* likewise, &c. Therefore as well to try that issue as the said other issue between the parties aforesaid above joined, let a jury thereon come before the lord the king at *Westminster* on day next after and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Palmer against Trevor.

Easter 33 C. 2.

For detaining
the plaintiff's
wife.

London, JOHN Trevor late of *Gline* in the county of *Suffex*, to wit, *J* esq; was attached to answer to *William Palmer*, esq; in a plea, why whereas *Elizabeth*, the wife of him the said *William Palmer*, from the family and company of him the said *William*, without any cause, and against the will of him the said *William*, had departed, and had absented herself from the said *William*: and whereas the said *William* afterwards, to wit, on the first day of *January* in the 32^d year of the reign of the lord the now king, at *London*, to wit, in the parish of *St. Mary le Bow*, in the ward of *Cheape*, had found the said *Elizabeth* in the family of the said *John Trevor*, and then and there required the said *John* to deliver to the same *William* the wife of him the said *William*, and the same *William* his wife aforesaid then and there endeavoured, and would have taken and carried away, the said *John* not only refused to deliver to the same *William* the wife of him the said *William*, and would not permit him the said *William* to take and carry away his wife, but also the said *John* with force and arms, &c. there the wife of him the said *William* aforesaid then and always after hitherto hath detained and kept, whereby the same *William* the comfort and company of his wife aforesaid for all the said time hath lost and been deprived of; and other outrages, &c.

Fortaking away
the plaintiff's
wife with his
goods.

London, JOHN Trevor late of *Glyne* in the county of *Suffex* to wit, *J* esq; was attached to answer to *William Palmer*, esq; in a plea, why with force and arms, &c. *Elizabeth*, then and yet the wife of him the said *William*, with the goods and chattels of him the said *William*, to the value of 500 *l.* at *London*, he took and carried away, and those goods and chattels from the same *William* doth yet detain, whereby the said *William* the comfort,

comfort, company and assistance of the said *Elizabeth*, and the use of his goods aforesaid, hath lost and been deprived of, and other outrages did him, to the great damage of him the said *William*, and against the peace of the lord the now king, &c. And whereon the same *William* by *Gervase Gill* his attorney complains, that the said *John* on the first day of *January* in the 32d year of the reign of the said lord the now king, the said *Elizabeth*, then and yet the wife of him the said *W.* with the goods and chattels, to wit, 150 pearls and 20 diamonds of him the said *William*, to the value, &c. at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, did take and carry away, and those goods and chattels from the same *William* doth yet detain, whereby the same *William* the comfort, company and assistance of the said *Elizabeth*, and the use of his goods aforesaid, hath lost and been deprived of, and other outrages, &c. to the great damages, &c. and against the peace, &c. whereby he says that he is prejudiced, and hath damage to the value of 5000 *l.* And therefore he produces the suit, &c.

Smith against England and others.

[442]

H. 34 C. 2.

York, to wit. **G**EORGE *England*, late of the castle of *York*, yeoman, *Henry England*, late of the castle of *York* in the county of *York*, yeoman, and *Anthony Becket* late of *Doncaster* in the county of *York*, yeoman, were attached to answer to *Samuel Smith*, gent. in a plea, why with force and arms the cattle of him the said *Samuel* of the price of 30 *l.* found at *Barnesley* they took and carried away, and other outrages on him committed, to the great damages of him the said *Samuel*, and against the peace of the said lord the now king, &c. Whereon the said *Samuel Smith* by *James Donford* his attorney complains, that the said *George*, *Henry* and *Anthony* on the first day of *October* in the 33d year of the reign of the lord *Charles* the Second, now king of *England*, &c. the cattle of him the said *Samuel*, to wit, two horses and two mares of the price, &c. found at *Barnesley* aforesaid, took and carried away; and other outrages, &c. to the great damages, &c. and against the peace, &c. whereby he says that he is prejudiced, and hath damage to the value of 40 *l.* And therefore he produces the suit, &c.

Trespafs for taking cattle.

And the said *George*, *Henry* and *Anthony*, by *J. L.* their attorney come and defend the force and injury when, &c. and as to the force and arms, or any thing that is against the peace of the said lord the now king, and the whole trespafs aforesaid in the declaration aforesaid above mentioned, except the taking and carrying away of one horse and one mare of him the said *Samuel* in the declaration aforesaid above mentioned, the same *George*, *Henry* and *Anthony* say, that they are not guilty thereof: and of this they put themselves on the country: and the said *Samuel*

As to the force and arms, Not guilty.

As to the residue.

That the plaintiff was indebted to J. S. Plaintiff levied in a wapentage.

Plaintiff summoned.

The defendant declar'd there.

Judgment.

thereof likewise: and as to the residue of the trespass aforesaid above supposed to be done, the said *George, Henry* and *Anthony* say, that the said *Samuel* ought not to have or maintain his action aforesaid thereof against them, because they say, that before the time of the trespass aforesaid above supposed to be done; to wit, on the first day of *June* in the 31st year of the reign of the said lord the now king, at *Doncaster* in the county of *York*, and within the jurisdiction of the court of the wapentage of *Strafforth*, otherwise *Strafford*, he the said *Samuel* was indebted to the said *George* and *Henry* in 26 s. 6 d. for lime by them the said *George* and *Henry* before then there sold and delivered to the said *Samuel*; and whereas there now is, and for time immemorial hath been, a certain court of the wapentage of *Strafforth*, otherwise *Strafford*, held at the wapentage aforesaid, and within the jurisdiction of the same court, before the sheriff of the county of *York* for the time being, according to the custom of the same court: and whereas for the recovery of the debt aforesaid to them the said *George* and *Henry* so as aforesaid due, they the said *George* and *Henry* afterwards, to wit, at the court of the wapentage of *Strafforth*, otherwise *Strafford*, in the county of *York* aforesaid, held within the wapentage aforesaid, and within the jurisdiction of the same court, on the 25th day of *November* in the year of the Lord one thousand six hundred seventy-nine, did come into the same court in their proper persons, and did then and there levy a certain plaint against him the said *Samuel* in a plea of debt on a demand of 26 s. 6 d. and did then and there pray process to be thereon made against him the said *Samuel*; whereupon the same court did then and there command the bailiff of the wapentage aforesaid, that he should summon by good summoners the said *Samuel*, if he was found within the jurisdiction of the said court, so that he should be at the next court of the wapentage of *Strafforth*, otherwise *Strafford*; and within the jurisdiction of the same court, 16th day of *December* then next ensuing, to answer to the said *George* and *Henry* in the plea of his plaint aforesaid; whereupon at the next court of the wapentage of *Strafforth*, otherwise *Strafford*, held on the said 16th day of *December* within the wapentage aforesaid, and within the jurisdiction of the same court, the said *George* and *Henry* did come by *John Arthur* their attorney; and the said *Samuel* being solemnly called did not come; whereupon they the said *George* and *Henry* did then and there in the same court declare against the said *Samuel* for the said 26 s. 6 d. in the plea of their plaint aforesaid; upon which said declaration in the same court it was in such manner proceeded, that afterwards, to wit, at the next court of the wapentage of *Strafforth*, otherwise *Strafford* aforesaid, held within the wapentage aforesaid, and within the jurisdiction of the same court, on the 16th day of *January* then next following, that by the default of him the said *Samuel* it was then and there considered by the same court, that the said *G.* and *H.* should recover against the said *S.* his debt aforesaid, and also

16 s. for his damages which he had sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended; upon which said judgment afterwards, to wit, on the 26th day of Jan. then next ensuing, the steward of the same court commanded the bailiff of the wapentage aforesaid, and *George Cowling* his lawful deputy, and each of them, that they, or either of them, should levy of the goods and chattels of the said *Samuel* within the wapentage aforesaid, as well a certain debt of 26 s. 6 d. which the said *George* and *Henry* had in the same court recovered against him, as also 16 s. for his damages and costs to the same *George* and *Henry* in the same court adjudged, and that they, or one of them, should be at the next court of the wapentage of *Strafforth*, otherwise *Strafford* aforesaid, to be held within the wapentage aforesaid, and within the jurisdiction of the court aforesaid, on Tuesday the 17th day of February then next ensuing, there to return what they, or either of them, should do in the premises: by virtue of which said precept, he the said *Anthony Beckett*, then and yet bailiff of the wapentage of *Strafforth*, otherwise *Strafford* aforesaid, afterwards and before the return of the precept aforesaid, to wit, on the 10th day of February in the year of the Lord 1679 aforesaid, within the wapentage aforesaid, and the jurisdiction of the court aforesaid, did take the said one horse and one mare of the said two horses and two mares in the declaration aforesaid above mentioned in execution, to satisfy the same *George* and *Henry* for his debt and damages aforesaid; which said horse and mare the same *Anthony* afterwards, to wit, on the 12th day of February in the year of the Lord 1769, sold for 50 s. and no more, and 42 s. 6 d. thereof the said *Anthony* at the said next court of the wapentage of *Strafforth*, otherwise *Strafford* aforesaid, held on the said 17th day of February in the year of the Lord 1679 aforesaid, at *Doncaster* aforesaid in the county aforesaid, and within the jurisdiction of the same court, to the same *George* and *Henry* in full satisfaction of their debt and damages aforesaid paid; and 7 s. 6 d. the residue thereof, then and there offered to pay to him the said *Samuel*, but the said *Samuel* absolutely refused to receive the same; and the said *Anthony* always afterwards hitherto was ready, and yet is ready, and produces here in court the said 7 s. 6 d. ready to be paid to the said *Samuel*, which is the same residue of the trespass aforesaid whereof the said *Samuel* against the same *George*, *Henry* and *Anthony* above complains: and this the said *George*, *Henry* and *Anthony* are ready to verify: wherefore they pray judgment if the said *Samuel* ought to have or maintain his action aforesaid thereof against them, &c.

[443]

Execution
awarded.Sale of the
goods.Tender of the
overplus.

Hen. Pollexfen.

And the said *Samuel* hath received out of the court here the said 7 s. 6 d. therefore the said *Anthony* from those 7 s. 6 d. may be quit; and the same *Samuel*, as to the said plea of them the said

Plaintiff re-
ceives the over-
plus, and replies
de injuria sua
propria.

saïd *George, Henry* and *Anthony*, as to the taking and carrying away of the saïd one horse and one mare of him the saïd *Samuel* in the declaration aforesaid above mentioned says, that he by any thing by the saïd *George, Henry* and *Anthony* above in pleading alledged, ought not to be precluded from having his action aforesaid thereof against them, because he says, that they the same *George, Henry* and *Anthony*, the day and year in the declaration aforesaid above mentioned, with force and arms, &c. of their own wrong, without the cause aforesaid, by them the saïd *George, Henry* and *Anthony* above in pleading alledged, the saïd one horse and one mare, at *Barneſly* aforesaid found, did take and carry away, in manner and form as the same *Samuel* above against them thereof complains: and this he prays may be inquired of by the country: and the saïd *George, Henry* and *Anthony* likewise, &c. therefore to try as well that issue as the saïd other issue between the parties aforesaid above joined, the sheriff is commanded, that he cause to come before the saïd lord the king on the octave of the purification of the blessed virgin *Mary* whereſoever, &c. 12, &c. by whom, &c. and who neither, &c. to recognise, &c. because as well, &c. The same day is given to the parties aforesaid, &c.

[444]

Winter against Camborne.

For hunting in
the plaintiff's
closes.

Gloucester, **J**OH*N* *Winter*, esq; complains of *John Camborne* to wit. **J** in the custody of the marshal, &c. for this, that he the saïd *John Camborne* on the first day of *October* in the 33d year of the reign of the lord *Charles* the Second, now king of *England*, &c. with force and arms, &c. the closes of him the saïd *John Winter*, at the parish of *Dizham* in the county aforesaid, with greyhounds and coursers broke and entred, and the grafs of him the saïd *John Winter* in the closes aforesaid then and there growing with their feet by walking, and with the feet of the dogs aforesaid by hunting, did spoil and destroy, to the damage of him the saïd *John Winter* 10*l.* and therefore he produces the suit, &c.

Hafell and Spoor.

For destroying
and eating the
plaintiff's wheat,
barley, &c.

Somerset, **W**ILLIAM *Hafell* complains of *William Spoor* to wit. **W** the younger in the custody of the marshal, &c. for this, that he on the first day of *March* in the first year of the reign of the lord *James* the Second, now king of *England*, &c. with force and arms, &c. the closes of him the saïd *William Hafell*, called *Portbury-field*, and the *Tynning* in *St. George's* in the parish of *Portbury* in the county aforesaid, did break and enter, and the grafs of him the saïd *William Hafell* in the closes aforesaid then growing with their feet by walking did tread down and destroy, and also other grafs and the corn of him the saïd *William Hafell*, to wit, wheat, rye, barley, peas and oats.
in

in the closes aforefaid then and there likewise growing, with certain cattle, to wit, horfes, oxen, cows, heifers, hogs and ſheep, did eat up, tread down and deſtroy, the trespafs aforefaid, as to the eating up, treading down and deſtroying of the grafs and corn aforefaid, with the cattle aforefaid, from the ſaid firſt day of *March* in the firſt year aforefaid until the day of the exhibition of this bill at ſundry days and times continuing, and other outrages on him then and there committed, againſt the peace of the ſaid lord the now king, and to the damage of the ſaid *William Haſell* 30*l.* And therefore he produces the ſuit, &c.

And the ſaid *William Spoor* by *Thomas Edwards* his attorney comes and defends the force and injury when, &c. and as to the force and arms, and whatever is againſt the peace of the ſaid lord the now king, and alſo the whole trespafs aforefaid in the declaration aforefaid mentioned, except the entring into the closes aforefaid, and the treading down and deſtroying the grafs in the ſame growing with his feet by walking, and alſo the eating up, treading down and deſtroying the grafs there growing, with cattle, from the time of mowing or reaping, and likewise the carrying away of corn in a certain great field, called *Portbury-field* in the county aforefaid, whereof the ſaid closes in which, &c. are, and for all the time aforefaid, and alſo for time immemorial were, parcel, until the reſowing thereof with grain, ſays, that he is not guilty thereof: and of this he puts himſelf on the country: and the ſaid *William Haſell* thereof likewise, &c. And as to the entring of the closes aforefaid, and treading down and deſtroying the grafs in the ſame growing with his feet by walking, and alſo the eating up, treading down and deſtroying the grafs there growing, with the cattle aforefaid, from the time of mowing or reaping, and likewise the carrying away of corn in the ſaid great field, called *Portbury-field* in *Portbury* aforefaid, whereof the ſaid closes in which, &c. are, and for all the time aforefaid, and alſo for time immemorial were, parcel, until the reſowing thereof with grain above ſuppoſed to be committed, the ſame *William Spoor* ſays, that the ſaid *W. Haſell* ought not to have or maintain his action aforefaid thereof againſt him, becauſe he ſays, that long before the ſaid time when, &c. and alſo for the whole time when, &c. he the ſaid *William Spoor* was ſeiſed and yet is ſeiſed of and in one meſſuage and 60 acres of land, 20 acres of meadow and 20 acres of paſture to the ſame meſſuage belonging, in *Portbury* aforefaid in the county aforefaid, in his demefne as of fee; and that he the ſaid *William Spoor*, and all they whoſe eſtate the ſame *William Spoor* then had and now hath of and in the ſaid meſſuage, 60 acres of land, 20 acres of meadow and 20 acres of paſture with the appurtenances for time immemorial have had, and been accuſtomed to have, for themſelves, their tenants and farmers, of the ſaid meſſuage, 60 acres of land, 20 acres of meadow and 20 acres of paſture with the appurtenances, common of

As to part, not guilty.

And as to the reſidue, that he was ſeiſed of a meſſuage, &c. and ſo preſcribes for common for his cattle levant and couchant.

[445]

pasture in all the said great field, called *Portbury-field*, whereof the closes aforesaid in which, &c. are, and for all the time aforesaid were, parcel for all their commonable cattle upon the said messuage, 60 acres of land, 20 acres of meadow and 20 acres of pasture with the appurtenances levant and couchant, as to the said messuage, 60 acres of land, 20 acres of meadow and 20 acres of pasture with the appurtenances belonging and appertaining, after the moving or reaping and carrying away of the corn in that field, called *Portbury-field*, whereof the closes aforesaid are parcel, until that field, or some part thereof, should be resown with some corn; and the said *William Spoor* being so thereof seised, on the 10th day of *December* in the first year of the reign of the lord *James the Second*, now king of *England*, &c. the corn on the field aforesaid, called *Portbury-field*, before growing was then reaped and carried away; and afterwards, to wit, the same day and year, he the said *William Spoor* did put his cattle aforesaid, then upon the premises aforesaid levant and couchant, into the said closes in which, &c. being parcel of the said field, called *Portbury-field* in *Portbury* aforesaid in the county aforesaid, to eat up the grafs there growing, and to use his common aforesaid there until the resowing thereof; and the same *William Spoor* on that account the grafs aforesaid in the said closes in which, &c. then growing with his feet by walking did tread down and destroy, and with the cattle aforesaid on the premises aforesaid levant and couchant did eat up, tread down and destroy, as he lawfully might, which is the same residue of the trespass aforesaid whereof the said *William Hasell* above now complains; without that, that the said *William Spoor* is guilty of any trespass in the said closes in which, &c. or in any of them, with his feet by walking, with the cattle aforesaid, by eating up, treading down and destroying at any time after the field aforesaid, called *Portbury-field*, or any part thereof, in any year was sown with corn, and before the corn in the same year in that field was mowed, reaped and carried away: and this he is ready to verify: wherefore he prays judgment if the said *William Hasell* ought to have or maintain his action aforesaid thereof against him.

Repl'. de injuria
sua propria.

Traverse of the
prescription.

And the said *William Hasell* says, that he by any thing by the said *William Spoor* above in pleading alleged ought not to be precluded from having his action aforesaid thereof against him, because he says, that the said *William Spoor* the day and year abovesaid in the declaration aforesaid mentioned, of his own wrong did enter into the closes in the declaration aforesaid mentioned, and the grafs there growing, with the cattle aforesaid, did eat up, tread down and destroy, for all the time aforesaid in the declaration aforesaid mentioned, as the same *William Hasell* above against him complains; without that, that the said *William Spoor*, and all they whose estate the said *William Spoor* then had and now hath of and in the said messuage, 60 acres of land, 20 acres of meadow and 20 acres of pasture with the appurtenances,

appurtenances, for time immemorial have had, and have been accustomed to have, for themselves, their tenants and farmers, of the said messuage with the appurtenances, common of pasture, in all the said great field, called *Portbury-field*, for all their commonable cattle, after the mowing or reaping and carrying away of the corn in that field, until that field, or some part thereof, was resown with some grain, as the said *William Spore* above thereof in pleading hath alleged: and this, &c. Wherefore, &c.

And the said *William Spore* as before says, that he the same *William Spore*, and all they whose estate the said *William Spore* then had and now hath of and in the said messuage, 60 acres of lands, 20 acres of meadow and 20 acres of pasture with the appurtenances, for time immemorial have had, and have been accustomed to have, for themselves, their tenants and farmers, of the said messuage with the appurtenances, common of pasture, in all the said great field called *Portbury-field*, for all their commonable cattle, after the mowing, or reaping and carrying away of the corn in that field, until that field, or some part thereof, was resown with some corn, as he the said *William Spore* hath above in pleading alleged: and of this he puts himself on the country: and the said *William Hasell* thereof likewise, &c. Therefore as well to try that issue as the said former other issue between the parties aforesaid above joined, let a jury thereon come before the lord the king at *Westminster* on *Wednesday* next after three weeks of the holy *Trinity*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Issue on the traverse.

AND the said *William* says, that he by any thing by the said *Storer* above in pleading alledged ought not to be precluded from having his action aforesaid thereof against him, because he says, that before the said time when the trespass aforesaid in the declaration aforesaid mentioned was committed, and also at the said time when, &c. he the said *William* was a constable in and for the hundred of *Willingdon* in the county of *Suffex*: and farther the same *William* says, that before the said time when, &c. to wit, on the 28th day of *November* last past, one *E. Selwin*, kn't. then being one of the justices of the lord the now king of the peace in and for the county of *Suffex* aforesaid, at *Eastdeane* aforesaid in the county aforesaid, made his warrant in writing under his hand and seal, directed to the constables and decenners of the hundred of *Willingdon* aforesaid, and every of them; by which said warrant the said *Edward Selwin* did require, and in his majesty's name strictly command, the constables and decenners of the hundred aforesaid, and every of them, that immediately after the sight of the warrant aforesaid, they or some of them should attach the body of the said *Storer Bythewood* by the name of *Storer Bythewood* of *Eastdeane* aforesaid, and him should bring, or some of them should bring, before the said

To son assault pleaded, the plaintiff replies, that the assault was as constable in the execution of his office.

[446]

Edward Selwin at his house at *Fifson* in the county aforesaid, to answer to such things and misdemeanors as on the behalf of his majesty should be objected against him; which said warrant afterwards, to wit, on the first day of *December* last past to him the said *William*, at *Eastdeane* aforesaid in the hundred of *Willingdon* aforesaid in the county aforesaid, was delivered to be executed (he the said *William* being then and there one of the constables of the hundred of *Willingdon* aforesaid in the county aforesaid:) by virtue of which said warrant, he the said *William* afterwards, to wit, the same day and year, at *Eastdeane* aforesaid in the hundred of *Willingdon* aforesaid in the county aforesaid, by virtue of the warrant aforesaid, the body of the said *Storer* did attach to carry before the said *Edward Selwin* at his house at *Fifson* aforesaid in the county aforesaid, to answer as the said warrant commanded and required, as he lawfully might; which is the same assault of him the said *William* on him the said *Storer*, which the same *Storer* in his plea, aforesaid hath above pleaded; and this the same *William* is ready to verifify: wherefore he prays judgment, and his damages by reason of the trespass in his declaration aforesaid by him the said *Storer* on him the said *William* committed, to be adjudged to him, &c.

Berkley and Bathe.

For breaking the plaintiff's wall and erecting a building thereon, whereby the plaintiff's windows were darkened, &c.

The city of *Bristol*, **R**OBERT Berkley complains of *William Bathe*, *Charles Browne*, *Henry Emlyn*, *Thomas Evans*, and *Charles Emlyn*, in the custody of the marshal, &c. for this, that they the said *William*, *Charles Browne*, *Henry*, *Thomas* and *Charles Emlyn*, on the 18th day of *October* in the 4th year of the reign of the lord *James* the Second, now king of *England*, &c. with force and arms, &c. the house of him the said *Robert* at did break and enter, and the door of the cellar of the house aforesaid of him the said *Robert*, to the value of 20 s. did break and spoil, and also the wall of the house aforesaid of him the said *Robert* did break and dig thro', and several pieces of timber in that wall did put and fix; and another wall of him the said *Robert*, inclosing part of the yard of the house of him the said *Robert* there situated did break, and several beams thereon did put and fix, and on those beams a certain great edifice did build, and likewise 10,000 tiles of him the said *Robert*, to the value of 10 l. from the tiling of the house aforesaid of him the said *Robert* did take, pull out, spoil and carry away, and one cart load of timber, part of the house aforesaid of him the said *Robert*, from that house did cut, take and carry away, and also four windows of him the said *Robert* in his house aforesaid, by the erection of a certain edifice near the house aforesaid of him the said *Robert* on the South part of that house by them then and there new built did stop up, whereby two rooms of him the said *Robert* in his house aforesaid were stopped up and darkened, and yet are stopped up and darkened, and become of none use, and other outrages then and there com-

committed, against the peace of the said lord the now king and to the damage of the said *Robert* 200 l. And therefore he produces the suit, &c.

Hen. Pollexfen.

Sandes and Lloyd.

M. 36 C. 2. Roll. 413.

[447]

London, **R**ICHARD *Lloyd* late of *London*, knt. was attached to wit. to answer to *Thomas Sandes*, merchant, in a plea, why with force and arms a certain ship in the custody of him the said *Thomas Sandes*, with which and divers goods and merchandizes of him the said *Thomas Sandes* and several other merchants, his partners in the same ship, to be transported, the same *Thomas Sandes* was about to go to parts beyond the seas to merchandize with the goods and merchandizes aforesaid, and to make profit thereof to him the said *Thomas Sandes* for his part thereof, and to take of every of the said other merchants a certain salary to merchandize their part of the said goods and merchandizes, at *London* aforesaid found, did arrest, and that ship there under arrest, against the law and custom of this kingdom of *England*, did a long time detain; whereby the said *Thomas Sandes* the profit and advantage which he might have had and received from the goods and merchandizes aforesaid, by the merchandizing thereof as aforesaid, hath totally lost and been deprived of; and other outrages committed on him, to the great damage of him the said *Thomas Sandes*, and against the peace of the lord the now king, &c. And whereon the said *Thomas Sandes* by *Ralph Grange* his attorney complains, that the said *Richard Lloyd* on the 14th day of *December* in the 34th year of the reign of the lord the now king, with force and arms, &c. a certain ship called in the custody of him the said *Thomas Sandes*, with which and divers goods and merchandizes, to wit, 250 pigs of lead of him the said *Thomas Sandes*, and several other merchants, his partners in the same ship, to be transported, the same *Thomas Sandes* was about to go to parts beyond the seas, to wit, to the island of *Madeiras*, and other foreign parts, and to make profit thereof to him the said *Thomas Sandes* for his part, to wit, the 14th part thereof, and to take of every of the said other merchants a certain salary, to wit, the 20th part of their produce thereof to merchandize their part of the said goods and merchandizes, at *London* aforesaid in the parish of *St. Mary le Bow* in the ward of *Cheape* did arrest, and that ship there so under arrest, against the law and custom of this kingdom of *England*, for a long time, to wit, from the said 14th day of *December* in the 34th year aforesaid until the first day of *April* in the 36th year of the reign of the said lord the now king did detain, whereby the said *Thomas Sandes* the profit and advantage which he might have had and received from the goods and merchandizes aforesaid, by the merchandizing

For arresting
and detaining
the plaintiff's
ship, &c.

merchandizing thereof as aforesaid, hath totally lost and been deprived of; and other outrages, &c. to the great damage, &c. and against the peace, &c. whereby he says that he is prejudiced; and hath damage to the value of 10,000*l.* And therefore he produces the suit, &c.

Lee and Scarmer.

Affault, battery
and false im-
prisonment.

Northampton, *WILLIAM Lee*, gent. complains of *William Scarmer* and *Francis Adams* in the custody of the marshal, &c. for this, that they on the 14th day of *March* in the fifth year of the reign of the lord and lady *William* and *Mary*, now king and queen of *England*, &c. with force and arms, &c. on him the said *William Lee*, at *Daventry* in the county aforesaid, did make an assault, and him the said *William Lee* did then and there beat, wound and abuse, take and imprison, and him in prison there for a long time, to wit, for the space of 24 hours from thence next ensuing, without any reasonable and lawful cause, and against the law and custom of this kingdom of *England*, and until the said *William Lee* paid to them the said *William Scarmer* and *Francis Adams* a fine of 5*s.* 6*d.* to obtain his liberty, did detain, and other outrages on him then and there committed, against the peace of the said lord and lady the now king and queen, and to the damage of the said *William Lee* 40*l.* And therefore he produces the suit, &c.

As to part,
Not guilty.

When, &c. and as to the force and arms, and whatever that is against the peace of the said lord and lady the now king and queen, and also the whole trespass aforesaid, except the assault aforesaid, and the detention of him the said *William Lee* for the space of half an hour until the same *William Lee* paid to the said *William Scarmer* the said 5*s.* 6*d.* say, that they are not guilty thereof: and of this they put themselves on the country: and the said *W. Lee* likewise, &c. And as to the assault aforesaid, and the detention of the said *W. L.* for the space of half an hour until the said *W. L.* paid to the said *W. S.* the said 5*s.* 6*d.* the same *William* and *Francis* say, that the said *W. L.* ought not to have or maintain his action aforesaid thereof against them, because they say, that before the said time when, &c. and also at the said time when, &c. the said *W. S.* was and yet is lawfully possessed of and in a certain parcel of land, called *H.* in the parish of *H.* in the county aforesaid; and that the said *W. L.* being a person to the same *William* and *Francis* then altogether unknown, at the said time when, &c. parcel of the land of him the said *W. S.* aforesaid, of his own wrong, and without the licence and against the will of him the said *W. S.* with force and arms broke and entred, and the grass there growing, with his cattle, to wit, with two horses, trod down and consumed, and was there with those cattle doing damage; whereupon the said *W. S.* then and there required and demanded of the same *W. L.* a recompence and satisfaction for that damage to his said parcel

[448]

As to the re-
fute they justify
for a trespass by
riding over the
defendant's
land, and re-
fusing to make
satisfaction.

of land as aforesaid done, and that the said *W. L.* then and there absolutely refused to give or pay to the said *W. S.* any recompence or satisfaction, and then and there without any satisfaction for the damage aforesaid to the said *W. S.* made endeavoured to ride, and with the horses aforesaid to escape to places to the same *W. S.* unknown; wherefore the same *W. S.* and the said *Francis*, as his servant, then and there the horses aforesaid so as aforesaid doing damage distrained, with the intent to carry those horses to the next pound; and those horses, and the said *W. L.* riding upon one of the same horses, and being a person as aforesaid to the said *W. S.* and *Francis* intirely unknown, for the said space of half an hour, until the said *W. L.* voluntarily then and there paid 5*s.* 6*d.* for and in full satisfaction of the damage aforesaid by him the said *W. L.* and with his horses aforesaid to the said *W. S.* as aforesaid done, detained, as they lawfully might; which is the same trespass as to the assault aforesaid, and the detention of him the said *W. L.* for the space of half an hour, until the said *W. L.* paid the said *W. S.* the said 5*s.* 6*d.* whereof the said *W.* above complains; without that, that the said *W. S.* and *F.* are guilty of the assault aforesaid, and the detention of the said *W. L.* aforesaid, and the receipt of the money aforesaid, at *D.* aforesaid, or elsewhere, except in the said parcel of land of him the said *W. S.* and for the cause aforesaid, or in any other manner: and this they are ready to verify: wherefore they pray judgment if the said *W. L.* ought to have or maintain his action aforesaid thereof against them, &c. with this, that the said *W. S.* and *Francis* will verify, that the said 5*s.* 6*d.* was a reasonable satisfaction for the damage aforesaid so as aforesaid done, &c.

Upon this plea there was a demurrer and joinder, and judgment was given for the plaintiff. The entry of which judgment is as followeth:

But because the court of the said lord and lady the king and queen now here are not yet advised to give their judgment of and upon the premisses whereof the parties aforesaid have above put themselves on the judgment of the court, day therefore is given to the parties aforesaid before the lord and lady the king and queen at *Westminster* until, &c. to hear their judgment of and upon those premisses, because the court of the lord and lady the king and queen now here thereof not yet, &c. And as well to try the issue aforesaid between the parties aforesaid above joined to be tried by the country, as to inquire what damages the said *W. L.* hath sustained by reason of the trespass aforesaid, whereof the parties aforesaid have above put themselves on the judgment of the court, if judgment should happen to be given thereon for the said *W. L.* against the said *W. S.* and *F.* let a jury thereon come before the lord and lady the king and queen at *Westminster* on day next after and who neither, &c. to recognize,

Continuance.

Venire awarded as well to try the issue as to inquire of the damages, if, &c.

Judgment for
the plaintiff on
the demurrer.

Nolle prosequi as
to the issue.

[449]

nize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. On which day before the lord and lady the king and queen at *Westminster* come the parties aforesaid by their attornies aforesaid; whereupon all and singular the premisses being seen, and by the court of the said lord and lady the king and queen now here more fully understood, and mature deliberation being thereon had, as to the said plea of them the said *W. S.* and *F.* as to the assault aforesaid, and the detention of him the said *W. L.* for the space of half an hour until the said *W. L.* paid the said *W. S.* 5*s.* 6*d.* it seems to the court of the said lord and lady the king and queen now here, that that plea by the said *W. S.* and *F.* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to preclude him the said *W. L.* from having his action aforesaid thereof against them the said *W. S.* and *F.* And as to try the issue aforesaid between the parties aforesaid above joined to be tried by the country, the sheriff of *North'ton* aforesaid hath not returned thereof the writ, nor done any thing therein; and upon this the same *W. L.* freely here in court confesses, that he will not farther prosecute against the said *W. S.* and *F.* upon the issue aforesaid between the parties aforesaid above joined, but doth absolutely disavow and refuse to farther prosecute of and upon the issue aforesaid against the said *W. S.* and *F.* Therefore the said *W. S.* and *F.* as to try the issue aforesaid above joined may be thereof quit, &c. whereupon the said *W. L.* ought to recover his damages against the said *W. S.* and *F.* by reason of the premisses aforesaid, whereof the same *W. S.* and *F.* are above by the judgment of the court convicted: but because it is unknown to the court of the said lord and lady the king and queen now here what, &c.

Peers and Lucy and others.

For fishing in
his several
fishery.

Warwick, **T**HOMAS Peers, esq; complains of George Lucy, esq; *Edw. Lord*, *John Waterman*, *John Dickins*, *John Hawkes* the younger and *Richard Perkins*, in the custody of the marshal, &c. for this, that they on the 17th day of *April* in the 6th year of the reign of the lord and lady *William* and *Mary*, now king and queen of *England*, &c. with force and arms, &c. the close of him the said *T. P.* called *Cliffe Bank*, at the parish of *Alveston* in the county of *Warwick* aforesaid, did break and enter, and the grafs of him the said *T. P.* in the same close then growing, to the value of 40*s.* with their feet by walking did tread down and consume; and likewise for this, that they afterwards, to wit, the same day and year aforesaid, at *D.* in the county aforesaid, and at divers other days and times between the said 17th day of *April* and the first day of *June* then next following, with force and arms, &c. in the several fishery of him the said *T. P.* in the river of *Avon* in the parish of *Alveston* aforesaid in the county aforesaid did fish, and fish from
his

his fishery aforesaid, to wit, 10,000 roaches, 10,000 dace and 20,000 gudgeons, to the value of 100 *l.* then and at the several times aforesaid there found did take and carry away, and other outrages on him did then and there commit, against the peace of the said lord and lady the now king and queen, and to the damage of him the said *T. P.* 200 *l.* And therefore he produces the suit, &c.

By *Bryan*. Diversity between a several fishery and a free fishery. For no man can have a several piscary but in his own soil, and solely to himself. But I may grant a free fishery in my pond to several persons; which *Littleton* granted. *Mich. 17 Ed. 4. 6. b.* Sir *William Calthrop's* case. See *Upton* against *Dawkin* in the *Modern Reports*, *Hill. Jac. 2. K. B.* where a judgment was revers'd for a free fishery instead of a several fishery. 3 *Mod. Rep.* 97.

When, &c. and as to the force and arms, or any thing that is against the peace of the said lord and lady the now king and queen, and also the whole trespass aforesaid, except the breaking and entry of the close aforesaid, and the treading down and consumption of the grass aforesaid with their feet by walking in the declaration aforesaid above supposed to be committed, say, that they are not guilty thereof: and of this they put themselves on the country: and the said *T.* thereof likewise, &c. And as to the breaking and entry of the close aforesaid, and the treading down and consumption of the grass aforesaid with their feet by walking, the same *G. E. J. J. J.* and *R.* say, that the said *T.* ought not to have or maintain his action aforesaid thereof against them, because they say, that long before the said time when that trespass is supposed to be committed, to wit, on the first day of *December* in the third year of the reign of the lord *Edward* the Sixth, late king of *England*, &c. *John* earl of *Warwick* was seised of and in the manor of *Bishop Hampton* with the appurtenances in the said county of *Warwick*, whereof one acre of land covered with water in the parish of *Alveston* aforesaid in the county aforesaid, next and contiguously adjoining to the said close in which the trespass aforesaid is supposed to be committed, is, and at the said time when, &c. and also for time immemorial was, parcel in his demesne as of fee; and that the said late king *Edward* the Sixth then was seised of and in the close aforesaid in which, &c. in his demesne as of fee in the right of his crown of *England*; and that the said earl of the manor aforesaid with the appurtenances whereof, &c. so as aforesaid being seised, the same earl, and all they whose estate the same earl then had of and in the manor aforesaid with the appurtenances whereof, &c. have for time immemorial been used and accustomed to have the necessary easements following for the catching of the fish being in the water aforesaid, to wit, by themselves and their servants from time to time, and at all seasonable times of fishing in the water

As to part,
Not guilty:

As to the residue, that the earl of *Warwick* was seised in fee of the manor of *H.* whereof one acre of land covered with water is parcel.

That *Ed. 6.* was seised of the close in which, &c.

Prescription to enter the close in which, &c. to fish.

[450]

The E. of W.
granted the manor whereof,
&c. to Edward the Sixth, who entred and died seised,

whereby the manor whereof, &c. and the close in which, &c. descended to Q. Mary, &c.

P. and M.
granted the manor whereof, &c. with all ways, &c. to T. Lucy in fee.

water aforesaid, at their will, into the close aforesaid in which, &c. to enter, and the nets and other engines necessary for the catching of the fish being in that water there near the banks of the water aforesaid to open, and into the water aforesaid to throw, and in that water and out of that water to draw, for the necessary catching of the fish being in the water aforesaid; and the said late king Edward the Sixth of the said close in which, &c. so as aforesaid being seised, and the said earl of Warwick of the said manor with the appurtenances whereof, &c. in form aforesaid being seised, the same earl afterwards and before the said time when, &c. to wit, on the 20th day of December in the 3d year of the reign of the said late king, at Westminster in the county of Middlesex, by his certain indenture made between him the said earl of the one part, and the said late king of the other part, sealed with the seal of the said earl, and remaining inrolled on record in the court of chancery of the said lord and lady the now king and queen, at Westminster in the county of Middlesex aforesaid, the date whereof is the same day and year, did grant to the said late king, among other things, the manor aforesaid with the appurtenances whereof, &c. To have and to hold that manor with the appurtenances whereof, &c. to the same late king, his heirs and successors for ever: by virtue whereof the said late king into the said manor with the appurtenances whereof, &c. entred, and was thereof seised in his demesne as of fee in the right of his crown of England; and the said late king Edward the Sixth being so thereof and of the said close in which, &c. seised, afterwards and long before the said time when, &c. at the parish of Alveston aforesaid died so thereof seised, by whose death the said manor with the appurtenances whereof, &c. and the close aforesaid in which, &c. descended to the lady Mary, late queen of England, &c. as sister and heir of the said late king Edward the Sixth, whereby the same late queen Mary into the said manor with the appurtenances whereof, &c. and into the said close in which, &c. entred, and was thereof seised in her demesne as of fee in the right of her crown of England; and so being thereof seised, the same late queen Mary long before the said time when, &c. at the parish of Alveston aforesaid, took to husband Philip then king of Spain, whereby the same Philip, as king of England, in the right of the said late queen, and the same late queen were seised of and in the manor aforesaid with the appurtenances whereof, &c. and the said close in which, &c. in their demesne as of fee in the right of their crown of England; and so being thereof seised, they the same late king Philip and the late queen Mary afterwards and before the said time when, &c. to wit, on the 12th day of June in the 3d and 4th year of their reign, at Westminster aforesaid in the county of Middlesex aforesaid, by their letters patent sealed under the great seal of England, bearing date at Westminster aforesaid, the same day and year which the said defendants here in court produce, granted to one T. Lucy, esq; among other things, the said

saïd manor with the appurtenances whereof, &c. and all and singular ways, commodities, emoluments and hereditaments, in the saïd parish of *Bishop Hampton* in the saïd county of *Warwick*, and elsewhere wheresoever in the same county, to the saïd manor of *Bishop Hampton* whereof, &c. or any parcel thereof, howsoever belonging or appertaining, or as member, part or parcel of the same manor whereof, &c. had, known, accepted, used, reputed, demised or occupied, or with the same, or any part thereof, used or enjoyed, as fully, freely and intirely, and in as ample manner and form as any person whatever then before ever had, held or enjoyed, or ought to have, hold or enjoy, the manor aforesaid with the appurtenances whereof, &c. To have and to hold to the saïd *T. L.* his heirs and assigns for ever: by virtue whereof the same *T. L.* into the saïd manor with the appurtenances whereof, &c. afterwards and long before the saïd time when, &c. entred, and was thereof seised in his demesne as of fee; and the saïd *T. L.* of the manor aforesaid with the appurtenances whereof, &c. being as aforesaid seised, the saïd *T.* afterwards and long before the saïd time when, &c. at the parish of *Alveston* aforesaid died so thereof seised, by whose death the manor aforesaid with the appurtenances whereof, &c. descended to one *R. L.* whereby the same *R.* afterwards and long before the saïd time when, &c. into the manor aforesaid with the appurtenances whereof, &c. entred, and was thereof seised in his demesne as of fee; and the same *R.* so of the manor aforesaid with the appurtenances whereof, &c. being seised, the same *R.* afterwards and long before the saïd time when, &c. at the parish of *Alveston* aforesaid died so thereof seised without issue male from his body issuing, by whose death the manor aforesaid with the appurtenances whereof, &c. descended to one *B. Lucy*, as only daughter and heir of the saïd *R. L.* whereby the same *B.* afterwards and long before the saïd time when, &c. into the manor aforesaid with the appurtenances whereof, &c. entred, and was thereof seised in her demesne as of fee; and the saïd *B.* so of the manor aforesaid with the appurtenances whereof, &c. being seised, the same *Bridget* afterwards and long before the saïd time when, &c. thereof enfeoffed one *R. L.* the uncle of her the saïd *B.* To have and to hold to the same *R.* his heirs and assigns for ever, whereby the same *R.* was seised of the manor aforesaid with the appurtenances whereof, &c. in his demesne as of fee; and the saïd *R. L.* being so thereof seised, the same *R.* afterwards and long before the saïd time, &c. at the parish of *A.* aforesaid died so thereof seised, by whose death the manor aforesaid with the appurtenances whereof, &c. descended to one *T. L.* esq; as son and heir of the saïd *R. L.* whereby the same *T. L.* afterwards and long before the saïd time when, &c. into the manor aforesaid with the appurtenances whereof, &c. entred, and was thereof seised in his demesne as of fee; and the saïd *T. L.* being so thereof seised, the same *T. L.* afterwards and long before the saïd time when, &c. to wit, the day of

T. L. entred
and died seised.

Feoffment in
fee.

Death of the
feoffee.

His heir entred,
and devised the
manor whereof,
&c. to *J. M.*
&c. in fee.

in

[451]

J. M. &c. en-
feoff *D. L.* who
died seised,
whereby the
manor whereof,
&c. descended
to the defend-
ant *G.* and he
in his own
right, the
others as his
servants, just-
fy

in the year in due form of law made his last will and tes-
tament in writing, and by the same devised the manor aforesaid
with the appurtenances whereof, &c. to *J. M. R. W.* and *E. W.*
gent. their heirs and assigns for ever; and afterwards and
long before the said time when, &c. the same *T. L.* at the pa-
rish of *A.* aforesaid died so as aforesaid seised; after whose death
and long before the said time when, &c. the said *J. M. R. W.*
and *E. W.* by virtue of the devise aforesaid into the manor aforesaid
with the appurtenances whereof, &c. entred, and were
thereof seised in their demesne as of fee; and the said *J. M. R. W.*
and *E. W.* being so thereof seised, the same *J. M. R. W.*
and *E. W.* afterwards and long before the said time when, &c.
to wit, on the day of in the year thereof
enfeoffed one *D. L.* esq; to have and to hold to the same *D.* his
heirs and assigns for ever: by virtue whereof the same *D.* was
seised of the manor aforesaid with the appurtenances whereof,
&c. in his demesne as of fee; and the said *D.* being so thereof
seised, the same *D.* afterwards and long before the said time
when, &c. at the parish of *Alveston* aforesaid died so thereof
seised without any issue of his body issuing, by whose death the
manor aforesaid with the appurtenances whereof, &c. descended
to the said *G. L.* as brother and heir to the said *D.* whereby the
same *G.* afterwards and before the said time when, &c. into the
manor aforesaid with the appurtenances whereof, &c. entred,
and was and yet is thereof seised in his demesne as of fee; where-
fore the same *G.* in his own right, and the said *G. E. J. J. J.*
and *R.* as servants of the said *G.* and by his command, at the
said time when, &c. being a seasonable time of fishing in the
water aforesaid, into the said close in which, &c. near the bank
of the water aforesaid entred, and there the nets of the said *G.*
for the necessary catching of the fish being in that water opened,
and into the water aforesaid threw, and in that water and out of
that water drew, and thereby the grass aforesaid in the same close
then growing with their feet by walking trod down and consumed,
doing as little damage there as they could, as they lawfully might;
which is the same breaking and entry of the close aforesaid in
which, &c. and the treading down and consumption of the grass
aforesaid there with their feet by walking, whereof the said *T. P.*
above thereof against them complains: and this, &c.

Ed. Northey.

Demurrer by
protesting that
G. L. was not
seised in fee,
and that the
easement was
not a necessary
one.

And the said *T.* as to the said plea of them the said *G. E. J. J. J.* and *R.* as to the breaking and entry of the close aforesaid, and the treading down and consumption of the grass aforesaid with their feet by walking, in manner and form above in pleading alledged, says, that he by any thing by the said *G. E. J. J. J.* and *R.* above by pleading alledged ought not to be precluded from having his action aforesaid thereof against them, because by protesting, that the said *G. L.* was not seised of the said one acre of land covered with water in the parish of *Alveston* aforesaid

aforesaid in the county aforesaid in his demesne as of fee; and protesting likewise, that the easement aforesaid in the plea aforesaid above mentioned is not a necessary easement for the catching of fish in the water aforesaid; for plea nevertheless the same *T.* says, that the plea aforesaid by the said *G. E. J. J. J.* and *R.* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to preclude him the said *T.* from having his action aforesaid against them the said *G. E. J. J. J.* and *R.* and that he to that plea in manner and form aforesaid pleaded hath no necessity, nor is by the law of the land obliged in any manner to answer: and this he is ready to verify: wherefore for want of a sufficient answer in this behalf the same *T.* prays judgment, and his damages by reason of that trespass, to be adjudged to him, &c.

N. Wright.

And the said *G. E. J. J. J.* and *R.* say, that the plea aforesaid as to the breaking and entry of the close aforesaid, and the treading down and consumption of the grass aforesaid with their feet by walking, by them the said *G. E. J. J. J.* and *R.* in manner and form aforesaid above in pleading alledged, and the matter in the same contained, are good and sufficient in law to preclude the said *T.* from having his action aforesaid against them the said *G. E. J. J. J.* and *R.* which said plea, and the matter in the same contained, the same *G. E. J. J. J.* and *R.* are ready to verify and prove, as the court, &c. And because the the said *T.* to that plea doth not answer, nor hitherto in any wise deny it, the same *G. E. J. J. J.* and *R.* as before pray judgment, and that the said *T.* may be precluded from having his action aforesaid against them the said *G. E. J. J. J.* and *R.* &c. But because the court of the lord and lady the king and queen now here are not yet advised to give their judgment of and upon the premisses, whereof the parties aforesaid have above put themselves on the judgment of the court, day therefore is given to the parties aforesaid before the lord and lady the king and queen at *Westminster* until day next after to hear their judgment of and upon those premisses, because the court of the lord and lady the king and queen now here thereof not yet, &c. And as well to try the issue aforesaid between the parties aforesaid above joined to be tried by the country, as to inquire what damages the same *T.* hath sustained by reason of the trespass aforesaid, whereof the parties aforesaid have above put themselves on the judgment of the court, if judgment happens to be thereon given for the said *T.* against them the said *G. E. J. J. J.* and *R.* let a jury thereon come before the lord and lady the king and queen at *Westminster* on day next after and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Joinder.

Venire awarded
as well to try
the issue as to
inquire if, &c.

— and —

In trespafs the defendant justifies for a way which he had and ought to have, and not by prescription.

Note; the action as to the cattle was laid with a continuance.

AND the said *William Smith* by *J. L.* his attorney comes and defends the force and injury when, &c. and as to the force and arms, or any thing that is against the peace of the said lord the king, and likewise the whole trespafs aforesaid in the declaration aforesaid mentioned, except the entring of the close aforesaid of him the said *Thomas* called *Millfield*, and the treading down and consumption of the grafs of him the said *Thomas* in the same close growing with his feet by walking, and the eating up, treading down and consumption of other grafs of him the said *Thomas* in the same close likewise growing, with the cattle aforesaid, and the tearing up the soil of him the said *Thomas* with the carts in the declaration aforesaid mentioned, the same *William* says, that he is not guilty thereof: and of this he puts himself on the country: and the said *Thomas* thereof likewise, &c. And as to the entring of the close aforesaid of him the said *Thomas*, called *Millfield*, and the treading down and consumption of the grafs of him the said *Thomas* in the same close growing with his feet by walking, and the eating up, treading down and consumption of other grafs of him the said *Thomas* in the same close likewise growing, with those cattle, and the tearing up the soil and ground of him the said *Thomas* in the same close with the carts above supposed to be done, the same *William* says, that the said *Thomas* ought not to have or maintain his action aforesaid thereof against him, because he says, that long before the trespafs aforesaid in the declaration aforesaid above supposed to be committed, and also for all the time aforesaid in the declaration aforesaid mentioned, he the said *William* was lawfully possessed of and in one close of meadow in *C.* aforesaid in the county aforesaid, containing three acres, which said close of meadow lies next and contiguous to the said close of him the said *Thomas*, called *Millfield*, in which, &c. and the same *William* at the said times when, &c. and long before had and ought to have for himself and his servants, at all times of the year at their will, a certain way, as well foot as horse, and to drive and drive back the cattle of him the said *William*, and to carry and carry back with his carts and carriages from the king's highway in *C.* aforesaid in the county aforesaid, called *Lilburn Road*, in, by and thro' the close aforesaid of him the said *Thomas*, called *Millfield*, in which, &c. to the said close of meadow of him the said *William*, and from the same close of meadow of him the said *William* by the same way back to the king's highway aforesaid; wherefore the same *W.* the day and year in the declaration aforesaid above first mentioned into the close aforesaid of him the said *Thomas*, called *Millfield*, in the parish and county aforesaid, from the king's highway aforesaid, called *Lilburn Road* aforesaid, by the way aforesaid entred, and in, by and thro' that close by the way aforesaid unto the said close of him the said *William*

walked

walked, and the cattle aforefaid, being the proper cattle of him the faid *William*, then and at the feveral days and times for the time in the declaration aforefaid mentioned drove from the king's highway aforefaid, in, by and thro' the clofe aforefaid unto the faid clofe of meadow of him the faid *William*, and from the fame clofe by the fame way back to the king's highway aforefaid; and alfo the fame *William* his carts aforefaid, being his own proper carts, with his horfes aforefaid from the king's highway aforefaid, in, by and thro' the faid clofe of him the faid *Thomas* in which, &c. in that way unto the faid clofe of him the faid *William*, and from the fame clofe of him the faid *William* by the way aforefaid unto the king's highway aforefaid drew, using his way aforefaid, as he lawfully might; and by that means the grafs in the fame clofe in the way aforefaid growing with his feet by walking trod down and confumed, and the cattle aforefaid, other grafs of him the faid *Thomas* in the fame clofe then likewise growing, in their paffage in the way aforefaid, in, by and thro' the clofe aforefaid, fuddenly and by fnatches, againft the will of him the faid *William*, eat up, trod down and confumed, and the foil and ground aforefaid, with the carts aforefaid using the way aforefaid, tore up, doing the faid *Thomas* as little damage as he could; which is the refidue of the trespafs aforefaid as to the entring of the clofe aforefaid of him the faid *Thomas*, called *Millfield*, and the treading down and confumption of the grafs of the faid *Thomas* in the fame clofe growing with his feet by walking, and the eating up, treading down and confumption of other grafs of him the faid *Thomas* in the fame clofe likewise growing, with the cattle aforefaid, and the tearing up of the foil and ground of him the faid *Thomas* in the fame clofe with carts, whereof the faid *Thomas* above now complains: and this, &c. Wherefore, &c.

Webb againft Hauſon.

E. 8 W. 3.

[453]

London, **N**ORTON *Hauſon* late of *London*, gent. was attached to anfwer *Needler Webb*, gent. in a plea, why with force and arms on him the faid *Needler*, at *London* in the parifh of *St. Mary le Bow* in the ward of *Cheape*, he made an affault, and him beat, wounded and abufed, fo that his life was deſpaired of, and a wine glaſs in and upon the face of him the faid *Needler* there violently threw, and with the glaſs aforefaid by him the faid *Norton Hauſon* there thrown, him the faid *Needler* in and upon the left eye and in and upon the left cheek of him the faid *Needler* grievouſly ſtruck, cut and wounded, and other outrages on him committed, to the great damage of him the faid *Needler*, and againſt the peace of the lord the now king, &c. And whereon the faid *Needler* by *Thomas Kirwood* his attorney complains, that the faid *Norton* on the fifth day of *De-*

For throwing a wine glaſs in the plaintiff's face, and cutting his eye and cheek.

N 2

cember

cember in the 7th year of the reign of the lord the now king, with force and arms to wit, with swords, staves and knives on him the said *Needler*, at *London* in the parish of *St. Mary-le Bow* in the ward of *Cheape*, made an assault, and him beat, wounded, and abused, so that his life was despaired of, and a wine glass in and upon the face of him the said *Needler* then and there violently threw, and with the wine glass aforesaid by him the said *Norton* then and there thrown, him the said *Needler* in and upon the left eye and in and upon the left cheek of him the said *Needler* grievously struck, cut and wounded, and other outrages, &c. to the great damage, &c. and against the peace, &c. whereby he says that he is prejudiced, and hath damage to the value of 100*l.* And therefore he produces the suit, &c.

Henderfon against Crofs and others.

H. 7 W. 3. Roll. 364.

For breaking the plaintiff's house and taking away 20 barrels of beer.

Middlesex, **T**HOMAS *Henderfon* complains of *Robert Crofs*, to wit. *John Furbeck*, &c. in the custody of the marshal, &c. for this, that they on the fourth day of *October* in the year of the reign of the lord and lady *William and Mary*, now king and queen, of *Eng'and*, &c. with force and arms, &c. the house of him the said *Thomas*, at the parish of *St. Margaret Westminster* in the county of *Middlesex*, did break and enter, and 20 barrels filled with strong beer, to the value of 40*l.* and 10 butts filled with strong ale, to the value of 50*l.* of him the said *Thomas* in the cellar of the same house of him the said *Thomas* then and there being found did then and there take and carry away, and to their own use convert and dispose, and other outrages, &c.

Imparlance.

And now on this day to wit, *Wednesday* next after the octave of *St. Hilary* in this same term, until which day the said *Robert Crofs*, *John Furbeck*, &c. had leave to imparl to the bill aforesaid, and then to answer, &c. before which day the said lady queen

Death of *Q. M.*

Mary departed this life, before the lord the king at *Westminster* come as well the said *Thomas Henderfon* by his attorney aforesaid, as the said *Robert Crofs*, *John Furbeck*, &c. by *John Lilly* their attorney; and the same *Robert Crofs*, *John Furbeck*, &c. defend the force and injury when, &c. and as to the force and arms, or any thing that is against the peace of the said lord and lady the king and queen, and also the whole trespass aforesaid in the declaration aforesaid mentioned, except the entry into the house aforesaid of him the said *Thomas Henderfon* in the declaration aforesaid mentioned, and the taking and carrying away of 15 barrels of beer, the same *Robert*, *John*, &c. say, that they are not guilty thereof: and of this they put themselves on the country: and the said *Thomas* thereof likewise, &c. And as to the said entry into the house aforesaid of him the said *Thomas* in the declaration aforesaid mentioned, and the taking and carrying away the said 15 barrels of beer, the same *Robert*, *John*, &c. say, that the said *Thomas* ought not to have or maintain his

As to part not guilty.

As to the residue they justify by a warrant on a plaint in replevin.

action

[454]

action aforesaid thereof against them, because they say, that before the said time when the trespass aforesaid is above supposed to be done, to wit, on the fifteenth day of *September* 1694, at the court of the dean and chapter of the collegiate church of *St. Peter Westminster* in the county aforesaid, and within the jurisdiction of the same court, according to the custom there for time immemorial, before *Charles Bonython*, esq; the deputy of *James* duke of *Ormond*, high steward of the same court, came one *Thomas Crofs* in his proper person, and there levied a certain plaint against the said *Thomas Henderson* in a plea of taking and unjust detention of the said 15 barrels of beer, being the goods and chattels of the said *Thomas Crofs*; and the same *Thomas Crofs* then and there found sufficient security, as well to prosecute his plaint as to return the said 15 barrels of beer, if a return thereof should be adjudged; and upon the plaint aforesaid the said court then and there commanded *Richard Knipe*, esq; the bailiff of the court aforesaid, that he should cause the said 15 barrels of beer to be replevied or delivered to the said *Thomas Crofs*, and that he should put by surety and safe pledges the said *Thomas Henderson*, so that he should be at the next court of pleas of the said dean and chapter of the collegiate church, &c. on *Saturday* the 6th day of *October* then next ensuing, at the town-court house in *Westminster* aforesaid, to answer to the said *Thomas Crofs* in the plea of taking and unjust detention of the goods aforesaid, and that the same bailiff should have there then that precept; which said precept afterwards and before the return thereof, to wit, on the said 4th day of *October* in the declaration aforesaid mentioned, at the parish of *St. Margaret Westminster* aforesaid in the county aforesaid, and within the jurisdiction of the court aforesaid, was delivered to the said *Richard Knipe* in due form of law to be executed: by virtue of which said precept so as aforesaid directed, the said *John Furbeck*, as servant of the said *Richard Knipe*, and by his command, and the said *Robert Crofs*, *John Fish*, &c. in aid of the said *John Furbeck*, and by his command, before the return of the precept aforesaid, to wit, on the day and year aforesaid in the declaration aforesaid mentioned, into the house aforesaid of him the said *Thomas Henderson*, at the parish of *St. Margaret Westminster* aforesaid in the county aforesaid, and within the jurisdiction of the court aforesaid, the doors of the same house being then and there open, peaceably and quietly entered, and the said 15 barrels of beer of him the said *Thomas Crofs*, then being in that house, then and there to the said *Thomas Crofs* caused to be replevied and delivered, according to the form and effect of the precept aforesaid, as they lawfully might; which is the same entry into the house aforesaid, and the taking and carrying away of the said 15 barrels of beer, whereof the said *Thomas Henderson* above now complains.

This was held to be bad, because *Knipe* himself ought to have executed the warrant, and not his deputy or servant.

Preston and Hoskins.

Trespafs for the
mean profits by
the plaintiff in
ejectment in K.
B.
Pract. Reg. 496.
504. 602.

Hertford, **E** *EDWARD Hoskins* late of *Cheshunt* in the county
to wit. aforefaid, yeoman, was attached to answer to *John*
Preston in a plea, why with force and arms the close and house,
&c. of him the faid *John* at *Cheshunt* aforefaid he broke and
entred, and him from the use, poffession, occupation and benefit
of the faid close, house, &c. for a long time hindred and kept
out, whereby the fame *John* the profit and benefit of the faid
close, house, &c. for all the faid time loft and was deprived of,
and other outrages on him committed, to the great damage of
him the faid *John*, and againft the peace of the lady the late
queen and of the lord the now king, &c. And whereon the
fame *John* by *John Allen* his attorney complains, that the faid
Edward (the day of the demise in the declaration) with force
and arms, &c. the close, to wit, one close called one
other close called and one other close called and the
house of him the faid *John* at *Cheshunt* broke and entred, and
him from the use, poffession, occupation and benefit of the faid
closes and house for a long time, to wit, from the faid 10th day
of *October* in the year abovefaid until the day of
in the year of the Lord hindred and kept out, whereby the
fame *John* the profit and benefit of the faid closes and house for
all the faid time loft and was deprived of, and other outrages,
&c. to the great damage, &c. and againft the peace, &c.
whereby he fays that he is prejudiced, and hath damage to
the value of 30 l. And therefore he produces the fuit, &c.

[455]

The fame in C.
B.
Parl. Rep. 199.

A. *B.* late of, &c. was attached to answer to *C. D.* in a
plea, why with force and arms the close of him the faid
plaintiff at *G.* broke and entered, and him from his poffession
thereof expelled and removed, and him the faid plaintiff from
his poffession thereof for a long time kept out, and other out-
rages on him committed, to the great damage of him the faid
plaintiff, and againft the peace of the lord the now king, &c.
And whereon the faid plaintiff by *A. B.* his attorney com-
plains, that the faid defendant on the day of in
the year with force and arms, &c. the close of him
the faid plaintiff, called *G.* broke and entred, and him the
faid plaintiff from his poffession thereof expelled and removed,
and him the faid plaintiff from his poffession thereof for a long
time, to wit, from the faid day of in the year
abovefaid until the 20th day of *F.* then next following
kept out, and other outrages, &c. to the great damage, &c.

*Bulkeley and Roberts.**M. 8 W. 3. in C. B. R. 701. Tr. 9 W. 3. in C. B.*

London, **E**LLIS Roberts, gent. was attached by the writ of For tearing a bill
to wit. the lord the king of privilege, issuing out of the of exchange.
court here, to answer to Robert Bulkeley, gent. one of the attor-
nies, &c. in a plea of trespass: and whereon the same R. in
his proper person complains, that the said E. on the sixth day of
M. in the year at London in the parish of St. Mary le
Bow in the ward of Cheape, with force and arms, &c. a cer-
tain bill of exchange of him the said R. to the value of 40 l.
which the said E. (being a person using commerce) had accord-
ing to the custom of merchants drawn, and with his own pro-
per hand subscribed, and to one Mr. Tart directed, and had by
the same bill of exchange required the said Mr. Tart, at six
days after sight of the same bill, to pay to the said Robert Bul-
keley, or order, 56 l. and also which he had to the same R. then
before delivered, did tear, cancel and destroy, and other out-
rages, &c. to the great damage, &c. and against the peace,
&c. whereby, &c.

*Beamis and his Wife against Smith.**H. 9 W. 3. K. B.*

London, **T**HOMAS Bevis and Susannah his wife complain of
to wit. Nicholas Smith in the custody of the marshal, &c.
for this, that he on the first day of August in the year of
the Lord 1697, with force and arms, &c. on her the said Su-
sanna, at London aforesaid, to wit, in the parish of St. Mary le
Bow in the ward of Cheape, did make an assault, and her the
said Susanna did then and there beat, wound and abuse, so that her
life was greatly despaired of, and also for this, that he on the said
first day of August in the year aforesaid, with force and arms,
&c. on her the said Susanna, at London aforesaid in the parish
and ward aforesaid, did likewise make an assault, and her the
said Susanna did then and there beat, wound and so grievously
abuse, that the same Susanna with a certain child on her body by
the said Thomas begotten, being then and there big, afterwards,
to wit, on the 6th day of August in the year aforesaid, at Lon-
don aforesaid in the parish and ward aforesaid, miscarried, where-
by her life was greatly despaired of, and other outrages on the
same Susanna then and there committed, against the peace of
the said lord the now king, and to the damage of the said Tho-
mas 50 l. And therefore he produces the suit, &c.

When, &c. and as to the force and arms, or any thing that
is against the peace of the said lord the king, and also the
As to part not
guilty.

[456]

As to the rest,
that the defend-
ant was beadle to
the merchant-
taylors; and be-
cause the plain-
tiff disturbed the
company in the
quiet possession
of their hall, he,
by the command
of the master
and wardens,
gently laid his
hand upon her
to put her out.

whole trespass aforefaid, except the assault and beating aforefaid, the same *N.* says, that he is not guilty thereof; and of this he puts himself on the country: and the said *Thomas* and *Susanna* thereof likewise, &c. And as to the assault and beating aforefaid above supposed to be committed, the same *Nicholas* says, that the said *Thomas* and *Susanna* ought not to have or maintain their action aforefaid thereof against him, because he says, that long before the said time when, &c. and also at the said time when the assault and beating is above supposed to be committed, he the same *Nicholas* was and yet is beadle of the master and wardens of the merchant-taylors of the fraternity of *St. John* the Baptist in the city of *London*, and the said master and wardens of the merchant-taylors of the fraternity aforefaid long before the said time when, &c. and also at the said time when, &c. were seised, and yet are seised in their demesne as of fee in the right of their corporation, of and in a messuage in the parish of *St. Martin Outwich* in the ward of *Broad-street*, *London*, called *Merchant-taylors Hall*; and being so seised, the said *Susanna* at the said time when, &c. with force and arms, without the leave of the said master and wardens, did break the house aforefaid, and into the same without reasonable or lawful cause enter; wherefore the said *Nicholas*, being then and there beadle and servant to the said master and wardens, by their command did then and there require the said *Susanna* from thence to depart, which she then and there refused to do; wherefore the said *Nicholas*, being as aforefaid beadle to the said master and wardens, and by their command, in the defence of the said possession of the said master and wardens, gently laid his hands on the said *Susanna* in the messuage aforefaid, to remove and put the said *Susanna* out of the house aforefaid, as he lawfully might; which is the same assault and beating whereof the said *Thomas* and *Susanna* above now complain; without that, that he the said *Nicholas* is guilty of that assault and beating in the said parish of *St. Mary le Bow* in the ward of *Cheape*, or elsewhere, out of the said parish of *St. Martin Outwich* in the ward of *Broad-street*: and this, &c. wherefore, &c.

Repl' de injuria
sua propria.

Ought not to be precluded, because they say, that the said *Nicholas* on the first day of *August* in the year abovefaid in the declaration aforefaid above mentioned, of their own wrong, without any such cause by him the said *Nicholas* above in pleading alledged, on her the said *Susanna* did make an assault, and her the said *Susanna* did then and there beat, in manner and form as the said *Thomas* and *Susanna* above thereof against him complain: and this they pray may be inquired of by the country.

*Littleton at the suit of Cooke.**In C. B.*

AND the said *Edward* by *L. S.* his attorney comes and defends the force and injury when, &c. and as to the force and arms, the said *Edward* says that he is not guilty thereof, as the said *William Cooke* above against him complains: and of this he puts himself on the country: and the said *William Cooke* thereof likewise: and as to the residue of the trespasss aforesaid above supposed to be committed, the same *Edward* says, that the said *William Cooke* ought not to have his action against him, because he says, that one *Lawrence Jersey*, at *Tyley*, otherwise *Trinley* aforesaid, before the said time when the trespasss aforesaid is above supposed to be committed, to wit, on the same 29th day of *October* in the year aforesaid, was possessed of three hogsheds of cyder, as of his own proper goods; and he the said *Lawrence* being so as aforesaid possessed of the said three hogsheds of cyder, before the said time when, &c. to wit, on the same 29th day of *October*, at *Tyley*, otherwise *Trinley* aforesaid, the same three hogsheds of cyder delivered to one *Richard Baxter* to be safely kept, and from thence to *Gloucester* in the county of the same city to be carried; by virtue whereof the said *Richard Baxter* of the said three hogsheds of cyder was possessed: and farther the same *Edward* says, that the said *Richard Baxter* being so as aforesaid of the said three hogsheds of cyder possessed, the said *William Cooke* at the said time when, &c. to wit, on the same 29th day of *October* aforesaid, at *Tyley*, otherwise *Trinley* aforesaid, the said three hogsheds of cyder from the possession and custody of the said *R. Baxter* would and endeavoured to take and carry away, and on one *J. Baxter*, the wife of the said *R. Baxter*, then and there the same three hogsheds of cyder for the same *R. Baxter* keeping, and the possession thereof preserving, then and there made an assault, and her then and there beat, wounded and abused; wherefore the same *Edward*, then and there, being then the servant of the said *Richard Baxter*, as the servant of the said *Richard Baxter*, the said *Jane*, the wife of the said *Richard Baxter* his said master, and the possession of the said *Richard Baxter* his master, of the said three hogsheds of cyder, lest the said *W. Cooke* should the said *Jane* farther hurt and overpower, and the said three hogsheds of cyder from the custody and possession of the said *Richard Baxter*, the said master of the said *Edward*, should take and carry away, and for the preservation of the possession of the said *Richard Baxter*, the said master of him the said *Edward*, of the said three hogsheds of cyder, against the said *William Cooke* did defend, as he lawfully might; and thereupon the said *William Cooke* on him the said *Edward* did then and there make an assault, and him the said *Edward* would have beat

Justification in
trespass and af-
sault by son af-
sault demesne.

Lutw. 1437.

1457, 1463.

1483, 1497.

[457]

Trespas.

beat and abused, wherefore the same *Edward* did then and there defend himself against the said *William Cooke*; which is the same residue of the trespass whereof the said *William* above thereof now complains; and so the same *Edward* says, that the injury or damage, if any then and there happened to the same *William Cooke*, it arose from the proper assault of him the said *William Cooke*, and in defence of the said *Jane*, the wife of the said *Richard Baxter*, the master of him the said *Edward*, and of the possession of the said *Richard Baxter*, the master of him the said *Edward*, of the said three hogheads of cyder, and in the defence of him the said *Edward*: and this the same *Edward* is ready to verify: wherefore he prays judgment if the said *William Cooke* ought to have his action aforesaid against him, &c.

T. Parker.

Atlagary.

Linton and Bilson.

London, IF *William Linton* shall make, &c. put, &c. *Thomas Bilson* late of *London*, gent. &c. in a plea, why whereas the said *Thomas* on the first day of *September* in the 2d year of our reign, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, was indebted to the said *William* in 140*l.* of lawful money of *England*, for so much money of him the said *William* by him the said *Thomas* to the use of him the said *William* before that time had and received; and being so therein indebted, he the same *Thomas* in consideration thereof afterwards, to wit, on the same first day of *September* in the second year aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *William* then and there faithfully promised, that he the said *Thomas* the said 140*l.* to the same *William*, when he should be thereto after required, would well and truly pay and satisfy: nevertheless the said *Thomas* his promise and assumption aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the same *William* in this behalf craftily and subtilly to deceive and defraud, the said 140*l.* or any part thereof, to the same *William* hath not yet paid, or for the same in any wise satisfied, altho' to do it the said *Thomas* afterwards, to wit, on the 10th of *September* in the second year aforesaid, at *London* aforesaid in the parish and ward aforesaid, by the said *William* was required, but the said *Thomas* hath hitherto altogether refused, and yet doth refuse, to pay them, or any wise to satisfy the said *William* for the same, to the * damage of him the said *William* 140*l.* as it is said.

The *præcipe* for an original in case for money had and received to the plaintiff's use.

* The damage is the same sum for which the action is brought, because of the fine.

Plowman and Ward.

England, THE lord *William* the Third, late king of *England*, to wit. sent to the sheriffs of *London* his writ close in these words, to wit, *William*, &c. To the sheriffs of *London*, greeting: we command you, that you cause to be called *William Ward* late of *Hoton* in the county of *North'ton*, esq; from hustings until, according to the law and custom of our kingdom of *England*, he be outlawed, if he shall not appear; and if he shall appear, then take him and safely keep, so that you may

The manner of reversing an outlawry in K. B. for want of a writ of proclamation. Pract. Reg. 262. 266.

[459]

may have his body before us on the octave of *St. Hilary* where-soever we shall then be in *England*, to answer to *Richard Pleu-man* in a plea, why whereas the said *William* on the first day of *January* in the 12th year of our reign, was indebted to the said *Richard* in 40*l.* of lawful money of *England*, for wine, goods, wares and merchandizes, by the said *Richard* to the said *William* before that time sold and delivered; and being so indebted, the said *William* in consideration thereof afterwards, to wit, the same day and year, at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, assumed upon himself, and to the same *Richard* then and there faithfully promised, that he the same *William* the said 40*l.* to the said *Richard*, when he should be thereto after required, would well and faithfully pay and satisfy: and whereas also the said *William* afterwards, to wit, the same day and year, at *London* afore said in the parish and ward afore said, in consideration that the said *Richard*, at the special instance and request of the said *W.* had sold and delivered to the same *W.* several other wine, goods, wares and merchandizes, assumed upon himself, and to the same *R.* then and there faithfully promised, that he the same *W.* all such sums of money as the wine, goods, wares and merchandizes last mentioned were reasonably worth, to the same *R.* when he should be thereto after required, would well and faithfully pay and satisfy: and the same *R.* in fact says, that the wine, goods, wares and merchandizes last mentioned, were reasonably worth other 40*l.* of like money, to wit, at *London* afore said in the parish and ward afore said, whereof the said *W.* then and there had notice: and whereas also the said *W.* and *R.* afterwards, to wit, the same day and year, at *London* afore said in the parish and ward afore said, accounted together for and concerning several other sums of money by the said *W.* to the said *R.* due and payable, upon which said account the said *W.* was found in arrear to the said *R.* in 31*l.* 11*s.* and being so found in arrear, the same *W.* in consideration thereof afterwards, to wit, the same day and year, at *London* afore said in the parish and ward afore said, assumed upon himself, and to the same *R.* then and there faithfully promised, that he the same *W.* the said 31*l.* 11*s.* to the said *R.* when he should be thereto after required, would well and faithfully pay and satisfy: nevertheless the said *W.* his several promises and assumptions afore said in form afore said made not regarding, but contriving and fraudulently intending the said *R.* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money to the same *R.* hath not yet paid (altho' to do it the same *W.* afterwards, to wit, the same day and year, at *London* afore said in the parish and ward afore said, by the said *R.* was required) to the damage of the said *R.* 40*l.* as it is said; and whereon you yourselves have returned to us from the day of the holy *Trinity* in three weeks last past, that the said *W.* is not found in your bailiwick; and have there this writ. Witness

J. Holt,

7. Holt, knt. at *Westminster*
year of our reign.

day of

in the 13th

Jeon the elder attorney. Deane.

At the hustings of pleas of land, held in *Guildhall* in the city of *London* on *Monday* next after the feast of *St. Benedict* the abbot in the 13th year within written, the within named *W. Ward* was first called, and did not appear. At the hustings of the pleas of land, held in *Guildhall* aforefaid on *Monday* next after the feast of *St. James* the apostle in the 13th year within written, the said defendant was called a second time, and did not appear.

The return by
the old sheriffs.

The answer of { *Henry Furnese*, knt.
and
Rob. Beachcroft, knt. } sheriffs.

This writ as above indorsed was delivered to us the now sheriffs by the said late sheriffs on their going out of their office. At the hustings of the pleas of land, held at *Guildhall* aforefaid on *Monday* next after the feast of *St. Leodegery* the bishop and martyr in the 13th year within written, the said defendant was called the third time, and did not appear. At the hustings of pleas of land, held in *Guildhall* aforefaid on *Monday* next after the feast of *St. Luke* the evangelist in the 13th year within written, the said defendant was called the fourth time, and did not appear. At the hustings of the pleas of land, held in *Guildhall* aforefaid on *Monday* next after the feast of *All Saints* in the 13th year within written, the said defendant was called the fifth time, and did not appear, therefore he is outlawed.

The return by
the new.

The answer of { *Peter Floyer*, knt.
and
William Withers, knt. } sheriffs.

Afterwards, to wit, on day next after in this same term before the lady the queen at *Westminster* comes the said *William Ward* by *John Lilly* his attorney, and immediately says, that no writ of proclamation, according to the form of the statute in such case made and provided, issued against the said *William* in the plea aforefaid, wherefore the outlawry aforefaid in form aforefaid against him the said *William* promulged and had is void, and of no force nor effect in law: and this the same *William* is ready to verify: wherefore he prays judgment, and that the outlawry aforefaid against him the said *W.* in form aforefaid promulged and had may be reversed, annulled and held as intirely void, and that the same *W.* to the common law of this kingdom of *England*, and likewise to all things which he by reason of the outlawry aforefaid hath lost may be restored: and the said *W.* according to the form of the statute in such case made and provided, finds sufficient bail, to wit, *A. B.* of *London*, gent.

No proclama-
tion assigned for
error.
6 H. 8. c. 4.
sect. 5.

31 El. c. 3.
sect. 3.

[460]

gent. and C. D. of London, vintner : and now on this day comes into court the bail aforesaid, and have granted, and each of them for himself hath granted, that they owe to the said *Richard Plowman* 40 l. separately, which said several 40 l. they grant, and each of them for himself grants, shall be made of their and each of their lands and chattels, and levied to the use of the said *Richard*, on condition that the said *William* shall appear to a new original writ by the said *Richard* to be sued out, and shall pay the condemnation which shall be recovered, if the said *Richard* shall prosecute within two terms next following ; whereupon the files of the writs of *exigi facias* being searched for the writ of proclamation, it sufficiently appears to the same court here, that the allegation of the said *William* above for his discharge from the outlawry aforesaid is true ; therefore it is considered, that the outlawry aforesaid against the said *William* in form aforesaid pronounced and had be reversed, annulled and held as intirely void, and that the said *William* from the outlawry aforesaid be discharged, and on that account be in no wise molested or aggrieved, but go thereof without day, &c. and that the said *William* to the common law of *England*, and to all things which he by reason of the outlawry aforesaid hath lost, be restored, &c.

Vynal and Harman.

The *capias* on an original in case in order to outlawry.

ANNE by the grace of God, &c. To the sheriff of *Suffex*, greeting : we command you, that you take *John Harman*, late of *Lewes* in your county, oatmeal-man, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us on the morrow of the holy *Trinity* wheresoever we shall then be in *England*, to answer to *James Vynal* in a plea, why whereas the said *John* on the first day of *April* in the first year of our reign, at *Lewes* aforesaid, (and so recite the declaration) and have there this writ. Witness *J. Holt*, knt. at *Westminster* 28th day of *May* in the first year of our reign.

The alias.

Anne, &c. To the sheriffs of *London*, greeting : we command you, as we have before commanded you, that you take *Anne Markwicke* late of *London*, spinster, if she shall be found in your bailiwick, and her safely keep, so that you may have her body before us wheresoever we shall then be in *England*, to answer to *James Lopdell* in a plea, why whereas, &c. Witness *J. Holt*, knt. &c.

The pluries.

Anne, &c. To the sheriffs of *London*, greeting : we command you, as we have often commanded you, that you take *Anne Markwicke* late of *London*, spinster, if she shall be found in your bailiwick, and her safely keep, so that you may have her body before us wheresoever we shall then be in *England*, to answer to *James Lopdell* in a plea, why, &c.

Anne,

Anne, &c. To the sheriffs of *London*, greeting: we com-
mand you, that you cause to be called *Anne Markwicke* late of
London, spinster, from hustings to hustings until, according to
the law and custom of this our kingdom of *England*, she be
waived, if she shall not appear; and if she shall appear, then
take her and cause her to be safely kept, so that you may have
her body before us from the day of _____ wherefoever we shall
then be in *England*, to answer to *James Lopdell* in a plea, why
whereas, &c. to the damage of the said *James* 20 *l.* as it is said,
and whereon you yourselves have returned to us from the day of
last past, that the said *Anne* is not found in your baili-
wick; and have there this writ. Witness, &c.

The exigens.

Anne, &c. To the sheriffs of *Middlesex*, greeting: whereas
we have lately by our writ commanded our sheriffs of *London*,
that they should cause to be called *Anne Markwicke* late of *Lon-*
don, spinster, from hustings to hustings until, according to the
law and custom of this our kingdom of *England*, she should be
waived, if she should not appear; and if she should appear,
then they should take her and cause her to be safely kept, so that
they might have her body before us from the day _____ where-
foever we should then be in *England*, to answer to *James Lop-*
dell in a plea, why whereas, &c. to the damage of him the said
James 20 *l.* as it is said: we therefore command you, that by the
statute in the 31st year of the reign of the lady *Elizabeth*, late
queen of *England*, therefore provided, you cause the said *Anne*
to be proclaimed on three several days, according to the form of
that statute, whereof let one proclamation aforesaid be at or near
to the most usual door of the church of the parish of
where the said *Anne* is dwelling, that she may render herself to
our sheriffs of *London*, so that the same sheriffs may have her
body before us at the said term, to answer to the said *James* in
the plea aforesaid; and have there this writ. Witness, &c.

The proclama-
tion.

Stone and Gulston.

[461]

A N N E, &c. To the sheriff of *Middlesex*, greeting: where-
as your predecessor, our late sheriff of *Middlesex*, was com-
manded, that he should take *William Gulston* late of *Westminster*,
esq; otherwise called *William Gulston* of the *Middle-Temple*, *Lon-*
don, esq; if, &c. and safely, &c. so that he might have his body
before our justices at *Westminster* on the octave of *St. Hilary*, to
satisfy *Andrew Stone* as well a certain debt of 200 *l.* which the
same *Andrew* in our court before our justices at *Westminster* had
recovered against him, as 12 *l.* which to the same *Andrew* in
our same court had been adjudged for his damages which he had
had by reason of the detention of that debt whereof he was con-
victed: and on the same day came the said *Andrew* by his at-
torney, and offered himself the 4th day against the said *W. Gul-*
ston in the plea aforesaid, and he did not come; and the sheriff
then

Scire facias on
error to reverse
an outlawry.
Pract. Reg.
262, 266.

Outlawry.

then returned, that he was not found, therefore the sheriff was commanded, that he should cause the said *W. Gulsston* to be called from county to county until, &c. so that he might have his body on the morrow of the holy *Trinity*, to satisfy the said *Andrew* in the plea aforesaid, whereof, &c. And be it known, that the writ thereof the justices in our said court in that same term delivered to the under-sheriff of your county in form of law to be executed, &c. on which your said predecessor our sheriff returned, that at his county, held at the *Hercules's Pillars* in *Brook-street* in the county aforesaid on the 3d day of *June* in the 2d year of our reign, the said *W. Gulsston* was the fifth time called, and did not appear, and so at four county-courts then next preceding was called, and did not appear; and because he appeared at none of the said county-courts, therefore he was outlawed, as by the record and proceedings thereof, which we lately caused to be brought into our court before us for certain causes of error, appears to us on record; and the said *W. Gulsston* hath assigned errors on record, as by the inspection of the record thereof appears likewise to us on record: therefore we command you, that by good and lawful men of your bailiwick you give notice to the said *Andrew Stone*, that he be before us from the day of wheresoever, &c. to hear the record and proceedings aforesaid, and also the errors in the pronouncing of the outlawry aforesaid assigned, if he shall think fit, and farther to do and receive what our said court before us shall then and there consider in this behalf; and have there the names of those by whom you shall give him notice, and this writ. *Witness, &c.*

Crosse and Crosse.

Writ of error to
reverse an out-
lawry in K. B.
Dy. 195.

England, **T**HE lord the king hath sent to his justices, assigned to wit. to hold pleas before himself, his writ close in these words, to wit, *William* the Third, &c. To our justices, assigned to hold pleas before ourself, greeting: because in the record and proceeding, and also in the pronouncing of the outlawry against *Thomas Crosse*, late of *London*, the younger, gent. in a plea of trespass on the case, whereon he is outlawed in *London*, pronounced before us returned, as it is said, a manifest error hath happened, to the great damage of him the said *Thomas*, as by his complaint we have understood: we being willing the error, if any hath been, should be duly corrected, and full and speedy justice done to the said *Thomas* in this behalf, command you, that if the outlawry aforesaid is returned before us, as it is said, then the record and proceedings aforesaid being inspected, you farther cause to be done therein, for the error and vacating of the outlawry aforesaid, what of right and according to the law and custom of our kingdom of *England* shall be to be done. *Witness* ourself at *Westminster* 13th day of *May* in the 10th year of our reign.

Allowed by the court.

Fijb.

William the Third, &c. To the sheriffs of *London*, greeting : *Exigent.*
 we command you, that you cause *Thomas Crosse*, late of *London*,
 the younger, gent. to be called from hustings to hustings until,
 according to the law and custom of this our kingdom of *Eng-*
land, he be outlawed, if he shall not appear ; and if he shall ap-
 pear, then take him and safely keep him, so that you may have
 his body before us on the morrow of *All Souls* wheresoever we
 shall then be in *England*, to answer to *Thomas Crosse* the elder,
 gent. in a plea, why whereas the said *T. Crosse* the younger, on
 the fifth day of *June* in the 9th year of our reign, at *London*
 aforesaid, to wit, in the parish, &c. was indebted, (*so recite the*
declaration to) to the damage of him the said *T. Crosse* the elder
 100 l. as it is said ; and whereon you yourselves have returned
 to us from the day of the holy *Trinity* in three weeks last, that
 the said *T. C.* the younger is not found in your bailiwick ; and
 have there this writ. Witness *J. Holt*, knt. at *Westminster* 23d
 day of *January* in the 9th year of our reign. *Deane.*

[462]

At the hustings of pleas of land, held in *Guildhall* in the city
 of *London* on *Monday* next after the feast of the apostles *Peter* and
Paul in the year within written, the within named *Thomas* was
 first called, and did not appear. At the hustings of pleas of
 land, held in *Guildhall* aforesaid on *Monday* next after the feast
 of *St. James* the apostle in the year within written, the said de-
 fendant was called the second time, and did not appear.

The return by
the old sheriffs.

The answer of { *John Woolfe*, knt.
and
Samuel Blewitt, knt. } sheriffs.

This writ as above indorsed was delivered to us the now she-
 riffs by the said late sheriffs on their going out of their office. At
 the hustings of pleas of land, held in *Guildhall* aforesaid on *Mon-*
day next before the feast of the translation of *St. Edward* the king
 and Confessor in the year within written, the said defendant was
 a third time called, and did not appear. At the hustings of pleas
 of land, held in *Guildhall* aforesaid on *Monday* next before the
 feast of the apostles *Simon* and *Jude* in the year within written,
 the said defendant was a fourth time called, and did not appear ;
 and because there was not another hustings between the day of
 the teste and the day of the return of the said writ, therefore we
 could not cause him the said defendant to be farther called on this
 writ.

The return by
the new.

The answer of { *Barth. Gracedieu*, esq;
and
James Collet, esq; } sheriffs.

William the Third, &c. To the sheriffs of *London*, greeting : *The writ of*
 we command you, that those four hustings at which *T. Crosse*, *allocat.*
 late

late of *London*, the younger, gent. was called, and did not appear, as you yourselves to us on the morrow of *All Souls* last past have returned, being allowed, you cause the said *T.* to be farther called at your next hustings in *London* until, according to the law and custom of this our kingdom of *England* he be outlawed, if he shall not appear; and if he shall appear, then take him and cause him to be safely kept, so that you may have his body before us on the octave of *St. Martin* wheresoever we shall then be in *England*, to answer to *T. Crosse* the elder, gent. in a plea, why whereas the said *T. Crosse* the younger on the fifth day of *March* in the 9th year of our reign, at *London* aforesaid in the parish of *St. Mary le Bow* in the ward of *Cheape*, was indebted to the same *T. Crosse* the elder in the sum of 100 *l.* of good and lawful money of *England* of the money of him the said *T. Crosse* the elder, by the said *T. Crosse* the younger before that time had and received; and being so therein indebted, he the said *T. Crosse* the younger afterwards, to wit, the day, year and place above-said, in consideration thereof, assumed upon himself, and to the said *T. Crosse* the elder then and there faithfully promised, that he the said *T. Crosse* the younger the said 100 *l.* to the same *T. Crosse* the elder, when he should be thereto after required, would well and faithfully pay and satisfy: and whereas also afterwards, to wit, the day, year and place above-said, the said *T. Crosse* the elder and *T. Crosse* the younger accounted together for several sums of money, and upon that account the said *T. Crosse* the younger was found in arrear to the said *T. Crosse* the elder in other 100 *l.* of good and lawful money of *England*; and being so found therein in arrear, he the said *T. Crosse* the younger in consideration thereof afterwards, to wit, the day, year and place above-said, assumed upon himself, and to the said *T. Crosse* the elder then and there faithfully promised, that he the said *T. Crosse* the younger the said 100 *l.* last mentioned to the said *T. Crosse* the elder, when he should be thereto after required, would well and truly pay and satisfy: nevertheless the said *T. Crosse* the younger his several promises and assumptions aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the said *Thomas Crosse* the elder in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the said *T. Crosse* the elder (altho' to do it the said *T. Crosse* the younger afterwards, to wit, on the 27th day of *March* in the year above-said by the said *T. Crosse* the elder was often required) hath not yet paid, to the damage of the said *T. C.* the elder 100 *l.* as he says; and have there this writ. Witnesses *J. Holt, &c.*

The return.

From those four hustings at which the within named *Thomas* was the fourth time called. At the hustings of pleas of land, held in the *Guildhall* of the city of *London* on *Monday* next before the feast of *St. Martin* the bishop in the year within written, the
said

said defendant was the fifth time called, and did not appear; therefore he is outlawed.

The answer of { Barth. Gracedieu, knt.
and
James Collet, knt. } sheriffs.

Afterwards, to wit, on Friday next after 15 days of Easter in this same term before the lord the king at Westminster comes the said Thomas Crosse by John Lilly his attorney, and immediately says, that in the pronouncing of the outlawry aforesaid there is manifest error, in this, to wit, that the return of the said writ of *exigi facias*, and also the said writ of *allocatur*, is insufficient, invalid and void in law; therefore in that there is manifest error; there is error also in this, to wit, that no judgment of outlawry upon the writ of *allocatur* aforesaid is returned; therefore in that there is manifest error: and the said Thomas Crosse the younger prays the writ of the lord the king, to warn the said Thomas Crosse the elder to be before the said lord the king to hear the record and proceedings aforesaid; and it is granted him; whereby the sheriffs of London are commanded, that by good, &c. they give notice to the said Thomas Crosse the elder, that he be before the said lord the king on day next after wheresoever, &c. to hear the record and proceedings aforesaid, if, &c. and farther, &c. The same day is given to the said Thomas Crosse the younger, &c.

[463]

Error, that the writ of *allocatur* is insufficient, and that no judgment of outlawry is thereon returned.

Edwards and Fox.

England, THE lord William the Third, late king of England, &c. sent to the sheriffs of London his writ close in these words, to wit, William the Third, &c. to the sheriffs of London, greeting: we command you, that you cause Thomas Fox, esq; late warden of our prison of the Fleet, to be called from hustings to hustings until, according to the law and custom of this our kingdom of England, he be outlawed, if he shall not appear; and if he shall appear, then take him and cause him to be safely kept, so that you may have his body before us on the morrow of the ascension of the Lord, wheresoever we shall then be in England, to satisfy John Edwards, gent. one, &c. as well 52*l.* debt which the same John lately in our court before George Treby, knt. and his companions, our justices of the common bench, hath recovered against him, as 60*s.* which to the same John in our same court were adjudged for his damages which he had sustained, as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said Thomas is convicted, as by the inspection of the record and proceedings thereof, which we have lately for certain reasons caused to be brought before us, appears to us on record; and whereon in our court before us it

Error in K. B. to reverse an outlawry after judgment in C. B. Parl. Rep. 72, 75.

The exigent.

2 H. 7. 10.

is considered, that the said *John* may have thereof execution against the said *Thomas*, and also for 9 l. which to the same *John* in our said court before us were adjudged, according to the form of the statute thereof made for his damages, costs and charges which he hath sustained, by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting our certain writ of error by him the said *Thomas* of and upon the premisses in our court before us prosecuted, whereon the judgment aforesaid was in the same court afterwards affirmed, as likewise appears to us on record; and whereon you yourselves have returned to us from the day of *St. Martin* in 15 days last past, that the said *Thomas* is not found in your bailiwick; and have there this writ. Witness, &c.

Deane.

The return.

On which day before the said lord the king at *Westminster* *Owen Buckingham*, knt. and *Edward Wills*, knt. sheriffs of the city of *London*, have returned the writ aforesaid to them directed in this form, to wit, at the hustings of common pleas, held in the *Guildhall* of the city of *London* on *Monday* next after the feast of the conversion of *St. Paul* in the year within written, the within named *T. Fox*, esq; was first called, and did not appear. At the hustings of common pleas, held in the *Guildhall* aforesaid on *Monday* next before the feast of *St. Valentine* the bishop and martyr in the year within written, the said defendant was the second time called, and did not appear. At the hustings of common pleas, held at the *Guildhall* aforesaid on *Monday* next after the feast of the *Sts. Perpetua* and *Felicitas* in the 8th year of the lord the king within written, the said defendant was the third time called, and did not appear. At the hustings of common pleas, held at the *Guildhall* aforesaid on *Monday* next before the feast of the annunciation of the blessed virgin *Mary* in the 8th year above said, the said defendant was the fourth time called, and did not appear. At the hustings of common pleas, held in the *Guildhall* aforesaid on *Monday* next before the feast of *St. Mark* the evangelist in the 8th year above said, the said defendant was the fifth time called, and did not appear; therefore he is outlawed.

The answer of { *Owen Buckingham*, knt.
and
Edward Wills, knt. } sheriffs.

Writ of error
in K. B.

[464]

Wherefore the sheriff of *Shropshire* was commanded, that he should take him, if, &c. to stand right in court, &c. And now, to wit, on *Thursday* next after the octave of the purification of the blessed virgin *Mary* in this same term before the lady *Anne*, now queen of *England*, &c. at *Westminster* comes the said *Thomas Fox*, esq; in his proper person; and the said *T. Fox* produces here in court a certain writ of the said lady the now queen close to her justices here directed, which follows in these words, to wit, *Anne*, &c. To our justices, assigned to hold pleas in our court

court before us, greeting: because in the record and proceedings, and also in the pronouncing of the outlawry against *T. F.* esq; late warden of the prison of the lord *William* the Third, late king of *England*, of the *Fleet*, to satisfy *J. Edwards*, gent. one of the attornies of the court of the said late king of the bench, as well 52 *l.* debt which the same *John* lately in the court of the said late king before *G. Treby*, knt. and his companions, the justices of the said late king of the common bench had recovered against him, as 60 *s.* which to the same *John* in the said court of the said late king were adjudged for his damages which he had sustained, as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said *Thomas* is convicted, as by the inspection of the record and proceedings thereof, which the said late king had lately for certain reasons caused to be brought before him the said late king, appears to us on record; and whereon in the same court of the said late king before the said late king himself it was considered, that the said *John* should have execution thereof against the said *Thomas*, and also for 9 *l.* which to the same *John* in the same court of the said late king before the king himself were adjudged, according to the form of the statute thereof made, for his damages, costs and charges which he had sustained by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting a certain writ of the said late king of error by him the said *Thomas* of and upon the premises in the same court of the said late king prosecuted, whereon the judgment aforesaid in the same court of the said late king was afterwards affirmed, as likewise appears to us on record, whereon he said *T. Fox* is outlawed in *London*, pronounced, and before the said late king returned, as it is said, a manifest error hath happened, to the great damage of him the said *Thomas*, as by his complaint we have understood: we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the said *T. Fox* in this behalf, command you, that if the outlawry aforesaid is returned before you, as it is said, then the record and proceedings aforesaid being inspected, you farther cause to be done therein, for the annulling of the outlawry aforesaid, what of right and according to the law and custom of our kingdom of *England* shall be to be done. Witness ourself at *Westminster* the 11th day of *February* in the first year of our reign.

Cesar.

And upon this the said *T. Fox* says, that in the record and proceedings aforesaid, and also in the pronouncing of the outlawry aforesaid, there is manifest error, in this, to wit, because it doth not appear by the writ of *exigi facias* aforesaid, to the sheriffs of *London* aforesaid directed, of what town or hamlet or county the said *T. F.* then or then late was, as according to the form of the statute in such case made and provided, it ought; and therefore in that there is manifest error: there is error also

Error no addition according to the statute.

1 H. 5. 3.

The hustinga
not said to be
held for the
city.

Scire facias.

Nihil returned.

An *alias* award-
ed.

[465]
Count on the
errors.

in this, to wit, because it doth not appear by the return of the sheriffs of *London* aforesaid to the writ of *exigi facias* aforesaid, that the hustinga aforesaid, or any of them, were held for the city of *London*, as by the law of the land they ought; therefore in that there is manifest error: wherefore he prays the judgment of the court in the premisses, and that the outlawry aforesaid for those errors and others, being in the record and proceedings of the pronouncing of the outlawry aforesaid, may be reversed, annulled and held as intirely void, and that he the said *T. Fox* to the common law of this kingdom of *England*, and to all things which he by reason of the outlawry aforesaid hath lost, may be restored, and that he from the outlawry aforesaid by the court here may be dismissed, &c. And the same *T. Fox* prays the writ of the said lady the now queen to warn the said *J. Edwards* to be before the said lady the queen from the day of *Easter* in fifteen days, wheresoever, &c. to hear the record and proceedings, &c. and it is granted him, &c. whereby the sheriffs of *London* are commanded, that by good, &c. they give notice to the said *J. E.* that he be before the said lady the queen from the day of *Easter* in 15 days, wheresoever, &c. to hear the record and proceedings aforesaid, if, &c. and farther, &c. The same day is given to the said *T. F.* &c. On which day before the lady the queen at *Westminster* comes the said *T. F.* in his proper person; and the sheriffs of *London*, to wit, *R. Beddingfield*, knt. and *S. Gerrard*, bart. have now returned, that the said *J. E.* hath nothing in their bailiwick whereby they can give him notice, nor is he found in the same; and the said *John* hath not come: therefore as before the sheriffs are commanded, that by good and lawful men of their bailiwick they give notice to the said *John*, that he be before the said lady the queen from the day of *Easter* in five weeks wheresoever, &c. to hear the record and proceedings aforesaid, if, &c. and farther, &c. The same day is given to the said *T. Fox*, &c. On which day before the said lady the queen at *Westminster* comes the said *T. F.* in his proper person; and the said sheriffs of *London* as before return, that the said *J.* hath nothing in their bailiwick whereby they can give him notice, nor is he found in the same; and the said *J. E.* on the 4th day of plea being solemnly called doth not come, nor say any thing in bar or preclusion of the matters aforesaid above for error assigned; whereupon the said *T. F.* as before says, that in the record and proceedings aforesaid, and also in the pronouncing of the outlawry aforesaid, there is manifest error, alledging the errors aforesaid by him in form aforesaid above alledged; and prays that the said outlawry for those errors and others, being in the record and proceedings aforesaid, may be reversed, annulled and held as intirely void, and that he to the common law of the land of this kingdom of *England*, and to all things which he by reason of the pronouncing of the outlawry aforesaid hath lost, may be restored; and that the court of the said lady the queen now here may proceed to the examination, as well of the record

and proceedings of the promulgation of the outlawry aforesaid, as of the matters aforesaid above for error assigned: and because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lady the queen until on the morrow of the ascension of the Lord wheresoever, &c. to hear their judgment thereon, because the court of the said lady the queen here thereof not yet, &c. On which day before the lady the queen at *Westminster* comes the said *Thomas Fox* in his proper person; whereupon all and singular the premisses being seen; and by the court of the said lady the queen now here more fully understood, and mature deliberation being thereon had, it is considered, that the outlawry aforesaid for the errors aforesaid and others, being in the record and proceedings aforesaid, be reversed, annulled and held as intirely void; and that the said *Thomas Fox* from the outlawry aforesaid be discharged, and be not molested, nor in any wise aggrieved on that account, but may go thereof quit; and that the said *Thomas Fox* to the common law of *England*, and to all things which he by reason of the outlawry aforesaid hath lost, be restored, &c.

Judgment for
the reversal.

Patherick and Walden.

WILLIAM the Third, &c. To the sheriff of *Cambridge*, greeting: we command you, that you do not omit on the account of any liberty of your county, but by the oath of good and lawful men of your county, you diligently inquire what goods and chattels, lands and tenements, *Lyonell Walden* late of *London*, esq; otherwise called *Lyonell Walden* of *Huntingdon* in the county of *Huntingdon*, esq; hath or had in your bailiwick on *Monday* next after the feast of the apostles *Philip* and *James* in the 8th year of our reign, or ever after, on which day he was outlawed in *London* at the suit of *Jacob Patherick*, otherwise *Partherick*, in a plea of debt whereon he is convicted, as our sheriffs of *London* to our justices at *Westminster* at a certain day now past have certified, and those by their oath cause to be extended and appraised, according to the true value of the same, and those which by that inquisition you shall find into our hands take and cause to be safely kept, so that of the true value and issues of the same you answer to us; and they being so extended and appraised, what you shall do therein certify to our justices at *Westminster* on the octave of *St. Hilary* distinctly and openly under your seal and the seals of those by whose oath you shall make that extent and appraisement; and because the same *Lyonell* the outlaw wanders and secretes himself in your county, in contempt of us, and to the prejudice of our crown, we command you, that you take the said *Lyonell* wheresoever he shall happen to be found in your bailiwick, as well within liberties as without, and him safely keep, so that you may have his body before our justices at *Westminster* at the said term to do and receive what our said court

A special *scias*
utlagatum.
Parl. Rep. 73,
75.

shall consider concerning him in this behalf; and have there this writ. Witness *G. Treby, &c.* *Trevor.*

The execution of this writ appears in a certain schedule to this writ annexed.

Richard Parlett Read, esq; sheriff.

The inquisition
thereon.

[466]

Cambridge, **A**N inquisition indented taken at *Cambridge* 7th day of *December* in the 12th year of the reign of the lord *William* the Third, now king of *England, &c.* before me *Richard Parlett Read, esq; sheriff* of the county aforesaid, by virtue of the writ to me directed, and to this inquisition annexed, by the oath of *Henry Gibbons, Richard Rogers, (reciting all the 12)* good and lawful men of my bailiwick, who being sworn and charged, on their oath aforesaid say, that *Lyonell Walden, esq;* in the writ to this inquisition annexed mentioned, on *Monday* next after the feast of the apostles *Philip* and *James* in the 8th year of the reign of the lord the now king, on which day he was outlawed in *London* at the suit of *Jacob Patherick, otherwise Partherick,* in a plea of debt whereof he is convicted, was seised in his demesne as of fee of and in one messuage and one close of pasture thereto belonging, lying and being in the parish of *Doddington* within the isle of *Ely* in the county aforesaid, containing by estimation one acre and the half of an acre in the occupation of the said *Lyonell Walden,* of the clear yearly value in all issues, besides reprises, 10 s. and also of and in two closes of pasture in *Doddington* aforesaid, containing by estimation 35 acres (more or less) called or known by the name of *Doctors Close* or *Woodfalls Close* in *Doddington* aforesaid, in the occupation of *T. W.* of the clear yearly value in all issues, besides reprises, 40 s. and also of and in one other close of pasture, containing by estimation 12 acres (more or less) in *Doddington* aforesaid, in the occupation of *J. R.* of the clear yearly value in all issues, besides reprises, 20 s. and also of and in one other close of pasture, called *Herdmans Close* in *Doddington* aforesaid, containing by estimation 7 acres in the occupation of *T. W.* of the clear yearly value in all issues, besides reprises, 10 s. and also of and in one messuage called *Begles,* and one close of pasture, containing by estimation 12 acres (more or less) together with 30 acres of land, called *Lottground,* to the same belonging; and also of and in 30 acres of arable land and meadow to the same messuage belonging, lying dispersedly in the fields of *Doddington* aforesaid, in the occupation of the said *T. W.* of the clear yearly value in all issues, besides reprises, 40 s. and also of and in one messuage, 30 acres of land called *Lottground,* and 25 acres of arable land lying dispersedly in the fields of *Doddington* aforesaid, in the occupation of *W. Y.* and others, of the clear yearly value in all issues, besides reprises, 20 s. and also of and in 100 acres of arable land and meadow, lying dispersedly in the fields of *Doddington* aforesaid, late in the occupation of the said *T. W.* and others, of the clear yearly value in all issues,

sues, besides reprises, 40 s. and also of and in 40 acres of marsh, called *Friths*, and also of and in four acres of pasture, called *Begles Leys* in *Doddington* aforesaid, in the occupation of *Edward Nightgoe*, of the clear yearly value in all issues, besides reprises, 20 s. (*so on reciting several more particulars to*) All which said premisses I the said sheriff on the day of the caption of this inquisition into the hands as by the writ aforesaid I am commanded : and the jurors aforesaid on their oath aforesaid say, that *Lyonell Walden* in the writ aforesaid named on *Monday* next after the feast of the apostles *Philip* and *James* in the 8th year of the reign of the said lord the now king above said, or ever after, had not any other or more lands or tenements in my bailiwick, which I can extend to the knowledge of the jurors aforesaid, or any of them. In witness whereof as well *J.* the said sheriff as the jurors aforesaid have set our hands and seals to this inquisition the day, year and place first above said, &c.

Richard Parlett Read, esq; sheriff.

Wager of Law.

Delves and Gunner.

Account against
a bailiff by the
hands of the
plaintiff.
Pract. Reg.
674, 676.
Salk. 682, 684.

Suffex, **THOMAS Delves** complains of *William Gunner* in to wit. the custody of the marshal, &c. in a plea, that he render to him a reasonable account from the time that he was the bailiff of him the said *Thomas*, for this, to wit, that whereas the said *William Gunner* had been the bailiff of him the said *Thomas*, at *Easthoadley* in the county aforesaid, from the third day of *March* in the year of the Lord 1700 until the thirtieth day of the same month of *March*, and during the same time had received of the goods, wares and merchandizes of the said *Thomas*, by the hands of the said *Thomas*, the goods, wares and merchandizes following, to wit, five bags of hops, containing therein 1200 weight two quarters and 22lb. of hops, to the value of 49 *l.* 10 *s.* of lawful money of *England*, to merchandize and make profit thereof for him the said *Thomas*, and to render a reasonable account thereof to the said *Thomas*, when he should be thereto required: nevertheless the said *William*, altho' often required, &c. a reasonable account thereof to the said *Thomas* hath not yet render'd, but the same to him hitherto to render hath wholly refused, and yet doth refuse, whereby the said *Thomas* says that he is prejudiced, and hath damage to the value of 100 *l.* And therefore he produces the suit, &c.

Bar, not his
bailiff.

Judgment that
the defendant
wage his law.

And the said *William* by *George Tilden* his attorney comes and defends the force and injury when, &c. and says, that he never was the bailiff of the said *Thomas* of the goods, wares and merchandizes aforesaid of the said *Thomas*, or of any parcel thereof, in the form that the said *Thomas* hath above against him declared: and this he is ready to defend against him and his suit, as the court of the lady the queen here shall consider: therefore it is considered, that the said *William* do wage to him thereof his law himself with twelve hands; pledges of the law *John Den* and *Richard Fen*; and let him come with his law here on *Thursday* next after three weeks of *St. Michael*; and the attorney of the said *William* is order'd to have here on the same day the said *William* his master in his proper person to perfect his law aforesaid, &c.

Re. Raymond.

Friday next after three weeks of *St. Michael* in the 6th year of queen *Anne*.

*Delves
against
Gunner.*

} It is order'd, that a nonsuit be recorded on the motion
of Mr. *Raymond*.

Rule for a non-
suit.

By the court.

AND the same defendant defends the force and injury when,
&c. and says, that he doth not owe to the plaintiff the said
 100*l.* nor any penny thereof, in the form as the said plaintiff
 hath above against him declared: and this he is ready to defend
 against him and his suit however the court of the said lord the
 king here shall consider: therefore it is considered, that the said
 defendant do wage to him his law himself with twelve hands,
 and let him come with his law before the lord the king at *West-*
minster on day next after pledges to prosecute the
 law *John Doe* and *Richard Roe*; and the attorney of the said
 defendant is order'd to have before the said lord the king on the
 same day the said defendant his master in his proper person to
 perfect thereof his law aforesaid, *&c.* The same day is given to
 the said plaintiff there, *&c.* On which day before the lord the
 king at *Westminster* comes as well the said plaintiff by his attorney
 aforesaid, as the said defendant in his proper person; and here-
 upon the said defendant hath perfected thereof his law himself
 with twelve hands, as he above thereof waged it, *&c.* There-
 fore it is considered, that the said plaintiff take nothing by his
 bill aforesaid, but for his false plaint be in mercy: and the said
 defendant go thereof without day, *&c.*

[468]
 The defendant
 perfects his law,
 and judgment
 for the defend-
 ant. If the
 plaintiff is non-
 suit: then the
 defendant comes
 in his proper
 person; and the
 said plaintiff,
 altho' on the
 same day so-
 lemnly called,
 doth not come,
 nor farther pro-
 secute his bill
 aforesaid against
 the said defend-
 ant: there-
 fore, *&c.* judg-
 ment and costs
 as in a common
 nonsuit.

Entries.

Memorand' of
the same term.

Middlesex, **B**E it remember'd, that on *Wednesday* next after 15 days of *Easter* in this same term before the lord the king at *Westminster* came *A. B.* by *John Allen* his attorney, and produced here in the court of the said lord the king then there his certain bill against *C. D.* in the custody of the marshal, &c. in a plea of trespass (if in trespass) in a plea of trespass on the case (if in case) in a plea of breach of covenant (if in covenant) in a plea of trespass and ejectment (if in ejectment) in a plea of debt (if in debt) in a plea of trespass on the case (if in trover.) And there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *Middlesex*, to wit, (*so on the declaration verbatim, only when you come to in the custody of the marshal, &c. you say, being in the custody of the marshal of the Marshalsea of the lord the king before the king himself.*)

Of another
term.

Middlesex, **B**E it remember'd, that otherwise, to wit, in *Easter* term last past before the lord the king at *Westminster* came *A. B. &c.* (*as in the first memorandum.*)

Of a term above
a year past.

London, **B**E it remember'd, that otherwise, to wit, in *Easter* term in the 10th year of the reign of the lord *William the Third*, now king of *England*, &c. before the lord the king at *Westminster* came *A. B. &c.* (*as in the first memorandum.*)

Impar lance.
Pract. Reg. 34.

And now on this day, to wit, *Friday* next after the morrow of the holy *Trinity* in this same term, until which day the said defendant had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king at *Westminster* comes as well the said plaintiff by his attorney aforesaid, as the said defendant by *J. L.* his attorney; and the said defendant defends the force and injury when, &c. and says, that he is not guilty thereof: and of this he puts himself on the country: and the said plaintiff thereof likewise, * &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Wednesday* next after three weeks of the holy *Trinity*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

* Note; the
&c. supplies,
puts himself on
country.

1 Inst. 127. b.

Note; in all pleas the defendant ought to make his defence, to wit, defends the force and injury when, &c.

England, **T**HE lady the queen hath sent to the sheriff of *Sussex* her writ close in these words, to wit, *Anne* by the grace of God, of *Great Britain, France* and *Ireland* queen, defender of the faith, &c. To the sheriff of *Sussex*, greeting: whereas we lately commanded our sheriff of *Middlesex*, and so on to—and have there then this writ. Witness *J. Holt*, knt. at *Westminster* 4th day of *July* in the sixth year of our reign. *Holt. Coleman.* On which day before the lady the queen at *Westminster* comes the said *Henry Kenward* in his proper person, and the sheriff of the county of *Sussex*, to wit, *John Miller*, bart. returns, that the said *Elizabeth* is not found in his bailiwick, and the same *Elizabeth* doth not come: therefore as before the sheriff is commanded, that he take the said *Elizabeth*, if she shall be found in his bailiwick, and her safely keep, so that he may have her body before the said lady the queen on day next after to answer to the said *Henry* in the plea aforesaid: the same day is given to the said *Henry* there, &c.

The entry of a *latitat* on the roll to prevent the statute of limitation.

[470]

Scras and Harris.

WHEN, &c. and as to the force and arms, and whatever is against the peace of the said lady the queen, the same *Thomas* says, that he is not guilty thereof: and of this he puts himself on the country: and the said *Henry* thereof likewise, &c. and as to the residue of the trespass aforesaid above supposed to be committed, the same *Thomas* says, that the said *Richard* ought not to have or maintain his action aforesaid thereof against him, because he says, that the said *Richard* at the said time when the trespass aforesaid is above supposed to be committed, at *Lewis* in the county aforesaid, with force and arms, &c. on him the said *Thomas* did make an assault, and him the said *Thomas* then and there would have beat, wounded and abused, if he the said *Thomas* had not then and there immediately defended himself against the said *Richard*, wherefore the said *Thomas* did then and there defend himself against the said *Richard*: and so the said *Thomas* says, that the mischief or damage, if any then and there happened to the said *Richard*, it was from the proper assault of him the said *Richard*, and in the defence of him the said *Thomas*: and this the same *Thomas* is ready to verify: wherefore he prays judgment if the said *Richard* ought to have or maintain his action aforesaid against him, &c.

Plea as to the force and arms, not guilty.

As to the residue *son assault*.

And the said *Richard* says, that he by any thing by the said *Thomas* above in pleading alledged ought not to be precluded from having his action aforesaid for the residue of the said trespass against the said *Thomas*, because he says, that the said *Thomas* the day and year aforesaid in the declaration aforesaid mentioned, at *Lewis* aforesaid in the county aforesaid, of his own wrong, without such cause by him the said *Thomas* above in pleading alledged, on him the said *Richard* did make an assault, and him the said *Richard* did beat, wound and abuse, in manner

Repl' de injuria sua propria.

ner and form as the said *Richard* above thereof against the said *Thomas* complains: and this he prays may be inquired of by the country: and the said *Thomas* thereof likewise, &c. Therefore as well to try that issue as the said other issue between the parties aforesaid above joined, let a jury thereon come before the lady the queen at *Westminster* on *Thursday* next after three weeks of the holy *Trinity*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

I confess this action, and that the plaintiff hath sustained damages to 57 *l.* 4 *s.* 6 *d.* so that execution may stay till 15 *April* next. *W. T.* 9 *Feb.* 5 *G.* This is done to prevent the expence of an inquiry. *Clift* 421.

London, *JOHN H.* the elder complains of *William T.* to wit. *J* gent. one of the filazers of the court of the lord the king before the king himself present here in court in his proper person, for this, to wit, that whereas the said *William* after the first day of *May* in the year of the Lord 1705, to wit, on the 28th day of *March* in the year of the Lord 1718, in the parish of *St. Mary le Bow* in the ward of *Cheape*, did make his certain note in writing, called a promissory note, with his own proper hand subscribed, bearing date (*so on to*) and therefore he produces the suit, &c.

And the said *William* in his proper person comes and defends the force and injury when, &c. and says, that he cannot deny the action of the said *John*, nor but that he the said *William* did assume upon himself in manner and form as the said *John* above thereof against him complains, nor likewise but that the said *John* hath sustained damages, by reason of the non-performance of the promise and assumption aforesaid, to 57 *l.* 4 *s.* 6 *d.* as he the said *John* above by declaring supposes: and upon this the said *John* prays judgment, and those damages so acknowledged, together with his costs and charges by him about his suit in this behalf sustained, to be adjudged to him, &c. Therefore it is considered, that the said *John* do recover against the said *William* his damages aforesaid to 57 *l.* 4 *s.* 6 *d.* above acknowledged, and also 6 *l.* for his costs and charges aforesaid, with his assent by the court of the said lord the king now here adjudged; which said damages in the whole amount to 63 *l.* 4 *s.* 6 *d.* And the said *Thomas* in mercy, &c.

For costs 6 *l.*
9th *Feb.* 1718.

[471]

Booth and Johnson.

Non assumpsit
within six years
before the original.

AND the said *Anne* by *J. S.* her attorney comes and defends the force and injury when, &c. and says, that the said *Thomas* and *Mary* ought not to have their action aforesaid thereof against her, because she says, that she did not assume upon herself at any time within six years next before the day of the issuing of the original writ of them the said *Thomas* and *Mary*, in manner and form as the said *Thomas* and *Mary* above against her complain: and this she is ready to verify: wherefore she prays judgment if the said *Thomas* and *Mary* ought to have their action aforesaid thereof against her, &c.

And

And the said *Thomas* and *Mary* say, that they by any thing before alledged ought not to be precluded from having their action aforesaid, because they say, that within six years now last past, to wit, on the said 4th day of *April* in the year of the Lord 1699 aforesaid, the administration aforesaid was duly committed to the same *Mary* in the form aforesaid, to wit, at *Westminster* aforesaid, whereby this same action within those six years did accrue to the same *Thomas* and *Mary*: and this they are ready to verify: wherefore they pray judgment, and their damages by reason of the premises, to be adjudged to them, &c.

Repl^t that administration was granted such a day, whereby, &c.

The plaintiffs had judgment on a demurrer; which judgment was affirmed on a writ of error.

Peirce at the suit of Dunstar.

WHEN, &c. and as to the first promise and assumption in the declaration of him the said *William* aforesaid above mentioned, he the same *Edward* prays judgment of the declaration aforesaid, because he says, that the declaration aforesaid, and the matter in the same contained, are not sufficient in law to maintain the action of him the said *William* aforesaid thereof against him the said *Edward* had; to which said declaration, as to the said first promise and assumption in the declaration of the said *William* above mentioned, he the same *Edward* hath no necessity, nor is by the law of the land obliged in any manner, to answer: and this he is ready to verify: wherefore for want of a sufficient declaration in this behalf, as to the said first promise and assumption in the declaration of him the said *William* aforesaid above mentioned, he the same *Edward* prays judgment, and that the said *William* may be precluded from having his action aforesaid, as to the first promise and assumption in the declaration of the said *William* aforesaid above mentioned thereof against him the said *Edward*, &c. And as to the second, third and fourth promises and assumptions in the declaration of him the said *William* aforesaid above likewise mentioned, the same *Edward* says, that he did not assume upon himself in manner and form as the said *William* hath above against him declared: and of this he puts himself on the country: and the said *William* thereof likewise, &c.

The entry of a final judgment in case after a demurrer.

Demurrer to the first promise.

Non assumpsit to the others.

And the said *William* says, that he by any thing by the said *Edward* above in pleading alledged, as to the first promise and assumption in the declaration aforesaid above mentioned, ought not to be precluded from having his action aforesaid thereof against him, because he says, that the declaration aforesaid, and the matter in the same contained, as to that promise and assumption, are good and sufficient in law to maintain the action of him the said *William* aforesaid thereof against him the said *Edward* had; which said declaration, and the matter in the same contained, he the same *William* is ready to verify and prove, as the court,

Joinder in demurrer.

Venire awarded
as well to try the
issue as to in-
quire of da-
mages, if, &c.

[472]
Nolle prosequi
as to the issue.

Judgment for
the plaintiff on
the demurrer.

Inquiry
awarded.

court, &c. And because the said *Edward* to that declaration doth not answer, nor hitherto in any wise deny it, he the said *W.* as before prays judgment and his damages, by reason of those premisses, to be adjudged to him : but because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, whereof the parties aforesaid have put themselves on the judgment of the court, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until *Friday* next after the morrow of the holy *Trinity* to hear their judgment of and upon those premisses, because the court of the said lord the king now here thereof not yet, &c. And as well to try the issue aforesaid between the parties aforesaid above joined to be tried by the country, as to inquire what damages the said *William* hath sustained by reason of the premisses aforesaid, whereof the parties aforesaid have put themselves on the judgment of the court, if judgment shall happen to be given thereon for the said *William* against the said *Edward Peirce*, let a jury thereon come before the lord the king at *Westminster* on the said day; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. On which day before the lord the king at *Westminster* come as well the said *William* as the said *Edward* by their attornies aforesaid; and the said *William* hath acknowledged here in court, that he against the said *Edward*, as to the 2d, 3d and 4th promises and assumptions in his bill aforesaid above mentioned, will not farther prosecute; and as to the said first promise in the declaration aforesaid above mentioned, whereof the parties aforesaid have put themselves on the judgment of the court, because the court of the said lord the king here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the said lord the king at *Westminster* until *Thursday* next after three weeks of *St. Michael* to hear their judgment thereon, because the court of the said lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; upon which the premisses aforesaid, as to the first promise and assumption in the declaration aforesaid above mentioned, whereof the parties aforesaid have put themselves on the judgment of the court, being seen, and by the court of the said lord the king now here more fully understood, because it seems to the court of the said lord the king now here, that the declaration aforesaid, and the matter in the same contained, as to that first promise and assumption, is good and sufficient in law to maintain the action of him the said *W.* aforesaid thereof against the said *E.* had, it is considered, that the said *W.* ought to recover his damages against the said *E.* But because the court of the said lord the king now here do not know what damages the said *W.* hath sustained by reason of the premisses aforesaid, therefore the sheriff is commanded, that by the oath of 12 good and lawful men of his bailiwick he diligently in-
quire

Quire what damages the said *W.* hath sustained, as well by reason of the non-performance of the first promise and assumption aforesaid, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which, &c. send to the said lord the king at *Westminster* on *Friday* next after the octave of *St. Hilary* under the seal, &c. and the seals, &c. together with the writ of the said lord the king to him therefore directed: the same day is given to the said *W.* there, &c. On which day here comes the said *W.* by his attorney aforesaid; and the sheriff, to wit, *J. B.* esq; now returns here, that for the execution of the writ aforesaid, he sent to the high steward of the liberty of *Bury St. Edmonds* in the county aforesaid, who hath the full execution of all writs and warrants to be executed within the liberty aforesaid and the return of the same; which said high steward, to wit, *Thomas* lord *Jermyn* hath returned to the same sheriff a certain inquisition taken before the same high steward at *Ixworth* in the county aforesaid on the 21st day of *April* last past, by virtue of the warrant of the said sheriff on the writ aforesaid to the said high steward directed, by the oath of 12, &c. whereby it is found, that the said *W.* hath sustained damages by reason of the premisses, besides his costs and charges by him about his suit in this behalf expended, to 20 *l.* and for those costs and charges to 40 *s.* And because the justices here will advise themselves of and upon the premisses before they give judgment thereon, day is given to the said *W.* here until on the morrow of the holy *Trinity* to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here comes the said *W.* by his attorney aforesaid; and hereupon the premisses being seen, and by the justices here fully understood, it is considered, &c.

The inquisition taken by the bailiff of a liberty.

Higsons against Baldwin.

AND the said justices of assise before whom, &c. have sent here their record in these words, &c. Afterwards the day and place within contained, before *T. Jones*, knt. chief justice of the lord the king of the bench, and *Job Charlton*, knt. one of the justices of the said lord the king of the bench, justices of the said lord the king, assigned to take assises in the county of *Hertford*, by the form of the statute, &c. comes as well the within named *G. H.* gent. as the within written *T. Baldwin* by their attorneys within contained; and the jurors of the jury, whereof mention is within made, being called likewise come; and the said *T. Baldwin* challenges the array of the panel hereto annexed, because he says, that the jurors aforesaid in the panel aforesaid named at the time of the array of the panel aforesaid were returned of the venue of *Watford*, otherwise *Waterford*, in the record within written mentioned; and that the town of *Waterford* aforesaid is, and at the time of the array of the panel aforesaid was, within the hundred of *Cashoe* in the county aforesaid;

Challenge to the array at the assises for want of hundredors. 13 E. 1. c. 30.

4 A. c. 16. § 6.

[473]

A venire de novo
awarded.

and that the jurors aforesaid in the panel aforesaid named have nothing, nor at the time of the array of the panel aforesaid, or ever after, had any thing, nor had any of them at the time of the array of the panel aforesaid, or ever after hitherto, any thing within the hundred of *Casboe* aforesaid, neither were the jurors aforesaid in the panel aforesaid named at the time of the array of the panel aforesaid, or ever after hitherto commorant, nor was any of them at the time of the array of the panel aforesaid, or ever after hitherto commorant within the hundred of *Casboe* aforesaid: and because the said *George Higgon*s cannot deny the challenge aforesaid by the said *Thomas Baldwin* as aforesaid made, the said *Thomas Baldwin* prays that the panel aforesaid may be quashed: and because the justices here will advise themselves of and upon the premisses before they give judgment thereon, day is given to the parties aforesaid here until on the morrow of the holy *Trinity* to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here comes as well the said *George* as the said *Thomas* by their attornies aforesaid; and hereupon the premisses aforesaid being seen, and by the justices here fully understood, it is considered, that the panel of the jurors aforesaid be quashed, &c. And upon this the said *George* prays the writ of the lord the king to the sheriff of the county aforesaid to be directed to cause to come anew, 12, &c. and it is granted him, &c. Therefore the sheriff is commanded, that he cause to come here from the day of the holy *Trinity* in three weeks anew 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. On which day the jury between the parties aforesaid in the plea aforesaid was respited between them here until this day, to wit, from the day of *St. Michael* in three weeks then next following, unless the justices of the said lord the king assigned to take assises in the county aforesaid, by the form of the statute, &c. should first come on *Tuesday* the 10th day of *July* last past at the town of *Hertford* in the county aforesaid: and now here on this day comes the said *George* by his attorney aforesaid; and the said justices of assise before, &c. have sent here their record in these words: afterwards at the day and place within contained before, &c.

Tirrey and Duvall.

Imparlance.

Demise of the
queen.

AND now on this day, to wit, *Wednesday* next after the octave of *St. Hilary* in this same term, until which day the said *John Duvall* and *Elizabeth* his wife had leave to imparl to the bill aforesaid, and then to answer, &c. Before which day the said lady queen *Mary* departed this life, before the lord the king at *Westminster* comes the said *William Tirrey* by his attorney aforesaid; and the said *John* and *Elizabeth*, altho' on the same day solemnly called do not come, nor say any thing in bar or preclusion of the action of the said *William* aforesaid, whereby the same *William* remains against the said *John* and *Elizabeth* therein undefended,

undefended, &c. Therefore it is considered, that the said *William* do recover against the said *John* and *Elizabeth* the debt aforesaid, and also 31 s. for his damages which he hath sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in this behalf expended, to the said *William* by the court of the said lord the king now here with his assent adjudged : and the said *John* and *Elizabeth* in mercy, &c.

Judgment by
nil dicit in debt.

And the said *John* in his proper person comes and defends the force and injury when, &c. and prays leave to imparl to the bill aforesaid ; and it is granted him, &c. And hereupon a day is given to the parties aforesaid before the lord and lady the king and queen at *Westminster* until *Monday* next after the morrow of the ascension of the Lord in this same term, to wit, to the said *John* to imparl to the bill aforesaid, and then to answer, &c. On which day before the lord and lady the king and queen at *Westminster* comes the said *Elizabeth* by her attorney aforesaid ; and the said *John*, altho' on the same day solemnly called, doth not come, nor say any thing in bar or preclusion of the action of the said *Elizabeth* aforesaid, whereby the same *Elizabeth* remains against the said *John* therein undefended, &c. Therefore it is considered, &c.

Nil dicit in debt
of the same term
with the declaration.

Incedon and The Dutcheffs of Hamilton.

ON which day before the lord the king at *Westminster* comes the said *Robert* in his proper person ; and the sheriff of *Middlesex*, to wit, *John Bull*, knt. and *Thomas Ambrose*, esq; on that day returns, that he by virtue of the writ aforesaid to him directed by *J. D.* and *W. M.* good and lawful men of his bailiwick, had given notice to the said dutcheffs, that she should be before the lord the king on the day aforesaid wheresoever, &c. to shew, &c. as he was commanded ; and upon this the said *Robert* prays execution against the said dutcheffs for the damages aforesaid, according to the force, form and effect of the recovery aforesaid, to be adjudged to him, &c. And the said dutcheffs so warned on the fourth day of plea by *E. L.* her attorney likewise comes and prays oyer of the writ of *scire facias* aforesaid ; and to her it is read in these words, to wit, *George*, &c. Which being read and heard, the same dutcheffs says, that the said *Robert* ought not to have his execution aforesaid against her for the said 322 l. because she says, that there is not any such record of the judgment aforesaid and recovery aforesaid in the said court of the said lord the king now here remaining, as the said *Robert* by his writ aforesaid hath above supposed : and this she is ready to verify : wherefore she prays judgment if the said *Robert* ought to have his execution aforesaid for the damages aforesaid against her, &c.

A scire faci re-
turned on a
scire facias
quare executio-
nem non in error.

No such record.

And the said *Robert* says, that he by any thing by the said dutcheffs above in pleading alledged ought not to be precluded

[474]

Repl' that there
is such record.

Entries.

from having his execution aforesaid for the damages aforesaid against the said dutcheffs, because he says, that there is such record of the judgment and recovery of the damages aforesaid as by the writ aforesaid is above supposed, as appears in this present *Easter* term, Roll 234. and he prays that the term and roll aforesaid may be by the court of the said lord the king now here seen and inspected: and because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the king wheresoever, &c. to hear their judgment thereon, because the court of the said lord the king now here thereof not yet, &c.

Fowler at the suit of Tappenden.

Not guilty.

WHEN, &c. and say, that they are not guilty thereof: and of this they put themselves on the country: and the said *J. Tappenden*, &c. likewise, &c. Therefore let a jury thereon come before the lady the queen at *Westminster* on *Thursday* next after the octave of the purification of the blessed virgin *Mary*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. On which day before the lady the queen at *Westminster* come the parties aforesaid by their attornies aforesaid; and the sheriff of *Kent* aforesaid, to wit, *S. Stringer*, esq; hath returned the writ of *venire facias* aforesaid in all things served and executed, together with a panel of the names of the jurors to the same writ annexed, whereof none, &c. Therefore the sheriff of the county aforesaid is commanded, that he distrain the jurors aforesaid by all the lands, &c. and that of the issues, &c. so that he may have their bodies before the lady the queen at *Westminster* on *Wednesday* next after a month of *Easter*, to make the jury aforesaid between the parties aforesaid in the plea aforesaid; and in the mean time, according to the form of the statute in such case made and provided, the sheriff of the county aforesaid is commanded, that he have six out of the first 12 of the jurors aforesaid, or some greater number of them at the several places in question, on the 6th day of *April* next ensuing, who then and there shall have the matters in question shewn to them by *W. Back*, gent. and *P. Brooke*, gent. appointed by the court of the said lady the queen before the queen herself, to shew the several places aforesaid to the jurors aforesaid, and do cause to be returned to the said lady the queen at *Westminster* on the said day how he shall have executed the writ aforesaid; the same day is given to the parties aforesaid there, &c. On which day before the lady the queen at *Westminster* come the parties aforesaid by their attornies aforesaid; and the sheriff of the county aforesaid, to wit, *S. Stringer*, esq; hath returned, that by virtue of the writ aforesaid on the sixth day of *April* in the 7th year of the said lady the queen, he had caused a view of the said places in question

The entry of a
view according
to 4 Ann. c. 16.
§ 8.

tion to be had by *T. Twifden*, bart. &c. being the major part out of the first 12 jurors first impanelled and in the writ aforesaid named, at the said several places in question, to the said jurors then and there shewn by the said *W. Back* and *P. Brooke* by the court of the said lady the queen as aforesaid appointed, according to the tenor of the writ aforesaid; and that the residue of the execution of the writ aforesaid appears in a certain panel to that writ annexed: and hereupon the jurors of that jury, to wit, *T. Style*, bart. and the said *T. Twifden*, bart. &c. being called likewise come, who to say the truth of the premisses being elected, tried and sworn, as to the whole trespass in the declaration above second mentioned to be committed on the 28th day of *October* in the 6th year of the reign of the lady the now queen, and at sundry days and times between the said 28th day of *October* and the exhibition of the bill aforesaid, in the said place called the *East-grounds*, and also as to the trespass in the declaration aforesaid above third mentioned to be committed on the 12th day of *August* in the 6th year aforesaid, at the parish of *Tonge* aforesaid, say on their oath, that the said *John Fowler*, &c. are thereof guilty in manner and form as the said *J. Tappenden*, &c. above against them secondly and thirdly complain; and they assess the damages of them the said *J. Tappenden*, &c. by reason of those several trespasses, besides their costs and charges by them about their suit in this behalf expended, to 50*l.* and for those costs and charges to 20*s.* And as to the whole trespass in the declaration aforesaid first mentioned to be committed, on the said 12th day of *August* in the 6th year aforesaid, and at several days and times between the said 12th day of *August* and the exhibition of the bill aforesaid in the said places called *Great Burlett*, otherwise *Barlett*, *Little Burlett*, otherwise *Barlett Shawfleet* and *Stanleet*, the jurors aforesaid on their oath aforesaid farther say, that the said *J. Fowler*, &c. are not guilty thereof, nor is any of them guilty thereof, in manner and form as the said *J. F. &c.* have above for themselves in pleading alledged: but because the court of the said lady the queen now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lady the queen at *Westminster* until *Friday* next after the morrow of the holy *Trinity* to hear their judgment of and upon those premisses, because the court of the said lady the queen now here thereof not yet, &c. On which day before the lady the queen at *Westminster* come the parties aforesaid by their attornies aforesaid; whereupon all and singular the premisses being seen, and by the court of the said lady the queen now here more fully understood, and mature deliberation being thereon had, it is considered, as to the several trespasses whereof the said *John Fowler*, &c. by the jury aforesaid in form aforesaid are convicted, that the said *John Tappenden*, &c. do recover against the said *John Fowler*, &c. the damages aforesaid by the jurors aforesaid in form aforesaid assessed, and also 229*l.* for their costs and charges aforesaid to the same

Trial at bar.
Pract. Reg. 655.

[475]

Judgment for
the plaintiff for
part, and for the
defendant for
the rest.

John Tappenden, &c. with their assent, by the court of the said lady the queen now here of increase adjudged; which said damages in the whole amount to 280*l.* It is also considered, that the said *John Tappenden, &c.* be in mercy for their false plaint against the said *John Fowler, &c.* as to the trespass aforesaid whereof the said *John Fowler, &c.* are above in form aforesaid acquitted: and the same *John Fowler, &c.* do go thereof without day, &c.

Tanner at the suit of *Blisse.*

Fully administered, except, &c.
1 Show. 172.

AND the said *Edward Tanner* by *B. H.* his attorney comes and defends the force and injury when, &c. and says, that the said *Richard* ought not to have or maintain his action aforesaid thereof against him, because he says, he hath fully administered all and singular the goods and chattels which belonged to the said *Anthony Tanner* at the time of his death in his hands to be administered, except goods and chattels to the value of 17*l.* and that the same *Edward* hath no goods or chattels which belonged to the said *Anthony* at the time of his death in his hands to be administered, nor had on the day of the exhibition of the bill aforesaid of him the said *Richard*, nor ever after, except the goods and chattels aforesaid to the value of the said 17*l.* and this he is ready to verify; wherefore the same *Edward* prays judgment if the said *Richard* ought to have or maintain his action aforesaid against him, except for the said 17*l.* &c.

Judgment for the damages confessed.

And as to the rest that he hath sufficient.

Taxation of damages staid till the trial of the issue.

And the said *Richard* as to the said 17*l.* which the said *Edward* acknowledges to have in his hands to be administered prays judgment, and the same 17*l.* together with his damages, by reason of the detention of the same 17*l.* to be adjudged to him, &c. Therefore it is considered, that the said *Richard* do recover against the said *Edward* the said 17*l.* of the goods and chattels which belonged to the said *Anthony*: and the said *Edward* in mercy, &c. And as to the residue of his damages aforesaid, the said *Richard* says, that he by any thing before alledged ought not to be precluded from having his action aforesaid thereof against him the said *Edward*, because as to the said plea of the said *Edward* above pleaded, the same *Richard* says, that on the day of the exhibition of the bill of him the said *Richard*, to wit, on the 7th day of *May* in the 13th year of the reign of the said said lord the king, the said *Edward* had besides and above the goods and chattels aforesaid to the value of the said 17*l.* fundry goods and chattels which belonged to the said *Anthony* at the time of his death in his hands to be administered to the value of the residue of his damages, whereby he might have satisfied the said *Richard* thereof, to wit, at *Southwark* aforesaid in the county aforesaid: and this he prays may be inquired of by the country: and the said *Edward* likewise, &c. And because it is convenient that there be but one taxation of damages in this behalf, if judgment happens to be given for the said *Richard* for the residue

due of the damages aforesaid, therefore let the taxation of the damages for the non-payment of the said 17*l.* which the said *Edward* acknowledges to have in his hands to be administred, stay until the issue aforesaid between the parties aforesaid above joined be tried and determined: and to try that issue let a jury thereon come before the lord the king at *Westminster* on day next after and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Partridge at the suit of Baldwin.

AND the said defendant in his proper person comes and defends the force and injury, and says, that the court of the said lord the king here ought not to have cognisance of the plea aforesaid, because he says, that the cause of action aforesaid of the said plaintiff accrued to the same plaintiff at *Epping* in the county of *Essex* out of the jurisdiction of this court, and not in *Southwark* in the county of *Surrey*, or elsewhere within the jurisdiction of this court: and this the same defendant is ready to verify: wherefore he doth not suppose that the court of the said lord the king here will or ought to have or hold farther cognisance of the plea aforesaid, &c. *Edw. Northey.*

A foreign plea in the palace court.
Pract. Reg. 299.

Etterick at the suit of Fellow.

[476]

AND the said *Edward* by *A. B.* his attorney comes and defends the force and injury when, &c. and as to the second promise and assumption in the declaration aforesaid mentioned, and also as to 54*l.* 14*s.* 7*d.* parcel of the said 150*l.* in the said assumption in the declaration aforesaid first mentioned, says, that he did not assume upon himself in manner and form as the said *John* hath above against him declared: and of this he puts himself on the country: and as to 95*l.* 5*s.* 5*d.* residue of the said 150*l.* the same *Edward* says, that the said *John* ought not to recover his damages by reason of the non-payment of the said 95*l.* 5*s.* 5*d.* because he says, that he the same *Edward* from the time of the making of the promise and assumption aforesaid in the declaration aforesaid first mentioned above supposed to be, was and yet is ready to pay to the same *John* the said 95*l.* 5*s.* 5*d.* and before the day of the exhibition of this bill, to wit, 22d day of *September* in the 13th year of the reign of the lord *William* the Third, now king of *England*, &c. at the parish of *St. Mary le Bow* in the ward of *Cheape*, offered to pay to the same *John* the said 95*l.* 5*s.* 5*d.* nevertheless the same *John* the said 95*l.* 5*s.* 5*d.* of the said *Edward* then and there refused to receive; and the same *Edward*, the said 95*l.* 5*s.* 5*d.* ready to be paid to the said *John* here in court produces, if the said *John* will receive the said 95*l.* 5*s.* 5*d.* and this he is ready to verify: wherefore he prays judgment if the said *John* ought to have his damages.

Tender pleaded,
Pract. Reg.
562, 563.

The conclusion is in bar of damages only.
Lutw. 368.

damages by reason of the non-payment of the said 95*l.* 5*s.* 5*d.* against him, &c.

Edw. Northey.

Repl^r.

And the said *John*, as to the said plea of the said *Edward* as to the said first promise and assumption in the declaration afore-said mentioned for the said 95*l.* 5*s.* 5*d.* above pleaded says, that he by any thing by the said *Edward* in the same plea before alledged ought not to be precluded from having his action afore-said thereof against him the said *Edward*, because he says, that he the said *Edward* did not offer to the same *John* the said 95*l.* 5*s.* 5*d.* in manner and form as the said *Edward* hath above thereof in pleading alledged: and this he prays may be inquired of by the country: and the said *Edward* likewise, &c. Therefore, &c.

This plea must be pleaded before imparlance, and to a *quantum meruit*, but must be from the time of the making of the promise, &c. so that if the money was demanded afterwards, this plea will be against the defendant; and then the best way is to move to pay the money into court, and let the plaintiff proceed at his peril for the rest.

Fellow against Harpur and another.

Hill. 10 & 11 *W.* 3. in *C. B.* The entry of a filazer's bill.

Assumpsit by original against two executors for beer and ale sold to the testator.

London, **T**HE sheriffs were commanded that they should put to wit. by surety and safe pledges *Nathaniel Harpur* late of *London*, goldsmith, and *Mary Ward* late of *London*, spinster, executors of the will of *Margaret Ward*, widow, deceased, that they should be here from the day of *St. Michael* in three weeks, to answer to *Thomas Fellow*, *Samuel Fellow* and *Jacob Edge* in a plea, why whereas the said *Margaret* in her life-time, to wit, on the 17th day of *September* in the 10th year of the reign of the lord *William* the Third, now king of *England*, &c. at *London* in the parish of *St. Mary le Bow*, in the ward of *Cheape*, was indebted to the same *T. S.* and *J.* in 50*l.* of lawful money of *England*, for beer and ale by the same *T. S.* and *J.* to the said *M.* in her life-time before that time sold and delivered; and the said *M.* being so therein indebted to the same *T. S.* and *J.* the said *M.* in consideration thereof assumed upon herself, and to the same *T. S.* and *J.* then and there faithfully promised, that she the said *M.* the said 50*l.* to the same *T. S.* and *J.* when she should be thereto after required, would well and truly pay and satisfy: and whereas also (*so on a quantum meruit to*) but have altogether refused to pay them, or any wise satisfy them for the same, and the said *N.* and *M.* do yet refuse to pay them the same, to the damage of the said *T. S.* and *J.* 50*l.* as they say; and that the same sheriffs should have there this writ, &c.

[477]

On

On which day the said *T. S.* and *J.* by *A. P.* their attorney come, and the said *N.* and *M.* on the 4th day of plea being solemnly called did not come; and the sheriffs then returned, that they have nothing, &c. Wherefore the sheriffs were commanded, that they should take them, if, &c. and them safely, &c. so that the same sheriffs might have their bodies here from the day of *St. Martin* in 15 days to answer, &c. On which day the same *T. S.* and *J.* by their attorney aforeaid came and offered themselves the 4th day of plea against the said *N.* and *M.* in the plea aforeaid; and the said *N.* and *M.* did not come; and the sheriffs have now returned, that the said *N.* and *M.* are not found, &c. Therefore as before the sheriffs were commanded, that they should take the said *N.* and *M.* if, &c. so that the same sheriffs might have their bodies here on this day, to wit, on the octave of *St. Hilary*, to answer, &c. On which day come the same *T. S.* and *J.* by their attorney aforeaid, and have offered themselves the 4th day of plea against the said *N.* and *M.* in the plea aforeaid: and the said *N.* by *M. F.* his attorney comes, &c. and the said *M.* being solemnly called doth not come; and the sheriffs have now returned, that the said *M.* is not found, &c. And upon this the said *T. S.* and *J.* by their attorney aforeaid complain, why whereas the said *M.* in her life-time, to wit, on the 17th day of *September* in the 10th year of the reign of the lord *William* the Third, now king of *England*, &c. at *London* in the parish of *St. Mary le Bow* in the ward of *Cheape*, was indebted to the same *T. S.* and *J.* in 50 *l.* of lawful money of *England*, for beer and ale by the same *T. S.* and *J.* to the said *M.* in her life-time before that time sold and delivered; and the said *M.* being so therein indebted to the same *T. S.* and *J.* the said *M.* in consideration thereof assumed upon herself, and to the same *T. S.* and *J.* then and there faithfully promised, that she the said *M.* the said 50 *l.* to the same *T. S.* and *J.* when she should be thereto after required, would well and truly pay and satisfy: and whereas also the said *M.* in her life-time afterwards, to wit, on the said 17th day of *September* in the 10th year above-said, at *London* aforeaid in the parish and ward aforeaid, in consideration that the said *T. S.* and *J.* at the special instance and request of the said *M.* had sold and delivered to the said *M.* 100 hogsheads of beer and 100 hogsheads of ale for the proper use and behoof of the said *M.* assumed upon herself, and to the same *T. S.* and *J.* then and there faithfully promised, that she the said *M.* so much money as the said 100 hogsheads of beer and 100 hogsheads of ale by the same *T. S.* and *J.* to the said *M.* so as aforeaid sold and delivered at the time of the sale and delivery of the same were reasonably worth, to the same *T. S.* and *J.* when she should be thereto after required, would well and truly pay and satisfy: and the said *T. S.* and *J.* in fact say, that the said 100 hogsheads of beer and 100 hogsheads of ale by them the said *T. S.* and *J.* to the said *M.* so as afore-said sold and delivered, at the time of the sale and delivery of the

Nihil.

Capias awarded.

Return.

An *alias* awarded.

One executor appears.

Breach of promise.

the same were reasonably worth 50 *l.* of lawful money of *England*; and thereof the said *M.* in her life-time, to wit, on the 18th day of *September* in the 10th year above said, at *London* afore said in the parish and ward afore said had notice: nevertheless the said *M.* in her life-time, and the said *N.* and *M.* after the death of the said *M.* not regarding the several promises and assumptions of the said *M.* in her life in form afore said so as afore said respectively made, but contriving and fraudulently intending the same *T. S.* and *J.* in this behalf craftily and subtilly to deceive and defraud, the said several sums of money, or any penny thereof, to the same *T. S.* and *J.* or any of them, have not paid, altho' to do it as well the said *M.* in her life-time, to wit, the said 18th day of *September* in the 10th year above said, as the said *N.* and *M.* after the death of the said *M.* to wit, the 20th day of *September* in the 10th year above said, by the same *T. S.* and *J.* were required, to wit, at *London* afore said in the parish and ward afore said, but have altogether refused to pay them, or any wise to satisfy them for the same, and the said *N.* and *M.* do yet refuse to pay them the same, whereby the said *T. S.* and *J.* say that they are prejudiced, and have damage to the value of 50 *l.* And therefore they produce the suit, &c.

Nil dicit.

And the said *N.* by the said *M. F.* his attorney comes and defends the force and injury when, &c. and says nothing in bar or preclusion of the action of the said *T. S.* and *J.* afore said, wherefore the same *T. S.* and *J.* ought to recover their damages by reason of the premises: but because it is not known what damages the same *T. S.* and *J.* have sustained by reason of those premises, the sheriffs are commanded, that by the oath of good and lawful men of their bailiwick they diligently inquire what damages the same *T. S.* and *J.* have sustained, as well by reason of the premises afore said as for their costs and charges by them about their suit in this behalf expended; and the inquisition which, &c. certify here from the day of *Easter* in 15 days under the seal, &c. and the seals, &c. On which day here come the same *T. S.* and *J.* by their attorney afore said; and the sheriffs, to wit, *J. S. knt.* and *W. G. knt.* now return here a certain inquisition taken before them at the *Guildhall* of the city of *London*, situate in the parish of *St. Lawrence* in the *Old Jewry* in the ward of *Cheape* of the same city, on the 17th day of *April* in the 11th year of the reign of the lord the now king, by the oath of 12, &c. whereby it is found that the same *T. S.* and *J.* have sustained damages by reason of the premises, besides their costs and charges by them about their suit in this behalf expended, to 46 *l.* 15 *s.* 3 *d.* and for those costs and charges to 26 *s.* 8 *d.* Therefore it is considered, that the same *T. S.* and *J.* do recover against the said *N.* and *M.* the damages afore said by the inquisition afore said in form afore said found, and also 12 *l.* 8 *s.* 1 *d.* to the same *T. S.* and *J.* at their request for their costs and charges afore said by the court here of increase adjudged; which said damages in the whole amount to 60 *l.* 10 *s.* of the

An inquiry awarded.

The return.

[478]
Judgment
against both.

the goods and chattels which belonged to the said *Margaret Ward* at the time of her death, being in the hands of the said *N. and M.* to be administred, if they have so much thereof in their hands; and if they have not so much in their hands, then the said 26 s. 8 d. and the said 12 l. 8 s. 1 d. of the proper goods and chattels of the said *N.* And the said *N.* in mercy, &c.

Only one mer-
cy.

Signed 26 May 1699.

The Earl of Kingale and Compton, Knt.

WHEN, &c. and says, that the said *Francis* ought not to have his action aforesaid against him, because he says, that he hath not at any time within six years next before the day of the issuing of the original writ of him the said *Francis* assumed upon himself in manner and form as the said *Francis* above against him complains: and this he is ready to verify: wherefore he prays judgment if the said *Francis* ought to have his action aforesaid against him, &c.

1 Show. 272.
Did not promise
within six years,
&c.

And the said *Francis* says, that he by any thing before alledged ought not to be precluded from having his action aforesaid against him the said *Almerick*, because he says, that he on the 23d day of *January* in the third year of the reign of the lady the now queen sued out his original writ in the plea aforesaid against the said *Almerick*, and that the said *Almerick* within six years before the said day of the issuing of the said original writ of him the said *Francis* did assume upon himself in manner and form as the said *Francis* above against him complains: and this he prays may be inquired of by the country: and the said *Almerick* likewise, &c. Therefore, &c.

Repl' that he
did.

AND the said *John Knapp* by *Thomas Harvey* his attorney comes and defends the force and injury when, &c. and says, that he hath not broke his covenants aforesaid, nor any of them, in manner and form as the said *William Sympson* above thereof against him complains: and of this he puts himself on the country.

Hath not broke
covenant.

AND the said *Thomas* by *Pocklington* his attorney comes and defends the force and injury when, &c. and says, that the said *William* ought not to have or maintain his action aforesaid against him the said *Thomas*, because he says, that the said *William Pentlowe* did not demise to the said *Thomas Wilson* the tenements aforesaid with the appurtenances in manner and form as the said *William Pentlowe* above thereof against him complains: and of this he puts himself on the country: and the said *William* thereof likewise, &c. Therefore let a jury thereon come before the lady the queen at *Westminster* on *Wednesday* next after three weeks of the holy *Trinity*; and who neither,

Did not demise.

ther, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

The testator did not promise.

W H E N, &c. and says, that the said *Joseph Wilson* in his life-time did not assume upon himself in manner and form as the said *William* above thereof against him complains: and of this he puts himself on the country: and the said *William* thereof likewise, &c. Therefore let, &c.

Did not promise within six years before the bill filed.
a Show. 272.

A N D the said *William* by *J. A.* his attorney comes and defends the force and injury when, &c. and says, that the said *John lord Somers, John Hawles and John Lilly*, ought not to have or maintain their action aforesaid thereof against him, because he says, that he hath not at any time within six years next before the day of the exhibition of the bill of them the said *John lord Somers, John and John*, assumed upon himself in manner and form as the same *John lord Somers, John and John*, above against him complain: and this he is ready to verify: wherefore he prays judgment if the said *John lord Somers, John and John*, ought to have or maintain their action aforesaid thereof against him, &c.

L. Agar.

[479]
Repl' that he did.

And the said *John lord Somers, John Hawles and John Lilly*, say, that they by any thing by the said *William* above in pleading alledged ought not to be precluded from having their action aforesaid thereof against him the said *William*, because they say, that the bill of them the said *John lord Somers, John Hawles and John Lilly*, was exhibited on the 28th day of *May* in the second year of the reign of the lady *Anne*, now queen of *England*, &c. and that the said *William* hath within six years next before the day of the exhibition of the said bill, assumed upon himself in manner and form as the said *John lord Somers, John Hawles and John Lilly* above thereof against him complains: and this they pray may be inquired of by the country: and the said *William* thereof likewise, &c. Therefore, &c.

T. Carthew.

Suggestion, that the venue arises in the county palatine, and ought to be tried by a jury there, &c.
Booth 9, 95,
100, 167, 203.
229, 283.

W H E N, &c. and saith, that he did not assume upon himself in manner and form as the said *Arthur* above against him complains: and of this he puts himself on the country: and the said *Edward* likewise, &c. And because the issue aforesaid between the parties aforesaid above joined ought to be tried by the men of the county palatine of *Chester*, to wit, of the neighbourhood of *Tarvin* aforesaid in the said county of *Chester* where the writ of the lord the king doth not run, and not elsewhere: therefore let the record of the plea aforesaid be sent to the justices of the said lord the king of the said county of *Chester*, so that the same justices may by the writ of the lord the king of that county duly to be made, cause the sheriff of that county to be

he commanded, that he cause to come before the same justices of the said lord the king of the county of *Chester* afore said twelve free and lawful men of the neighbourhood of *Tarvin* afore said in the said county of *Chester*, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. And when the verment and issue afore said shall be made and tried, that then the said justices may send the record of the plea afore said, with all that which shall therein in the court of the said lord the king there before them be done to the said lord the king at *Westminster* on a certain day, which the same justices of the county aforesaid shall to the parties afore said in the same court there prefix, to hear thereof their judgment, &c. And the said *Arthur* is order'd, that he prosecute with effect at the peril, &c.

AND because before *Wednesday* next after 15 days of *Easter* last past, until which day the said defendant had leave to imparl to the bill afore said, and then to answer, &c. before the said late lord the king at *Westminster*, the said lord king *William* the Third departed this life; and before the same day the plea afore said was adjourned by the writ of the lady *Anne*, now queen of *England*, of common adjournment, before the same lady the queen at *Westminster* until to and on this day, to wit, from the day of *Easter* in three weeks in this same term; and now on this day, to wit, from the said day of *Easter* in three weeks before the lady the queen at *Westminster* comes as well the said plaintiff by his attorney afore said, &c.

Demise of the king.

Adjournment of the term.
Pract. Reg. 36.

AND now on this day, to wit, *Wednesday* next after three weeks of *Easter* in this same term, until which day the said *Thomas Poweis*, otherwise *Powis*, had leave to imparl to the bill afore said, and then to answer, &c. before which day the said lord *William* the Third, late king of *England*, &c. departed this life; and also before the same day the plea afore said was adjourned by the writ of the lady *Anne*, now queen of *England*, of common adjournment, before the same lady the queen at *Westminster* until from the day of *Easter* in three weeks, before the lady the queen at *Westminster* comes as well the said *John* Till by his attorney, &c.

Another way.

WHEN, &c. and prays oyer of the writing obligatory afore said; and to him it is read, &c. He prays also oyer of the condition of the same writing; and to him it is read these words: the condition of this obligation is such, that if the above bound *Philip Parsons* shall appear before the justices of the lord the king at *Westminster* from the day of *St. Michael* in three weeks, to answer to *Elizabeth Fancott* in a plea of trespass, and also in a plea of trespass on the case on promise, to the damage of the said *Elizabeth* 20 l. &c. then this present obligation shall be void, otherwise shall stand and remain in its full force

Appearance on the day in the C. B. where the action is brought in the K. B.

[480]

force and strength; which being read and heard, the same *Philip* says, that the said *Robert* and *Henry* their action aforesaid thereof against him ought not to have or maintain, because he says, that after the making of the writing obligatory aforesaid, and before the day of the exhibition of the bill aforesaid, to wit, from the day of *St. Michael* in three weeks, in the condition aforesaid above mentioned, he the same *Philip Parsons* did appear before the justices of the said lord the king at *Westminster* aforesaid to answer to the said *Elizabeth Fancott* in the said plea of trespass, and also in the plea of trespass on the case, on promise, to the damage of the said *Elizabeth* 20 l. according to the form and effect of the recognisance aforesaid: and this he is ready to verify by the record in the court of the lady the queen before the justices of the lady the queen of the bench at *Westminster* remaining: wherefore he prays judgment if the said *Robert* and *Henry* ought to have or maintain their action aforesaid thereof against him, &c.

Repl^r that there
is no such re-
cord.

And the said *Robert* and *Henry* say, that they by any thing by the said *Philip* above in pleading alledged ought not to be concluded from having their action aforesaid thereof against him, because they say, that there is not any such record of the appearance by the said *Philip* made, before the justices of the lady the queen of the bench aforesaid remaining, as the same *Philip* above by pleading hath alledged: and this they are ready to verify: wherefore they pray judgment and their debt aforesaid, together with their damages, by reason of the detention of that debt, to be adjudged to them, &c.

Rejoinder, that
there is,

And the said *Philip* as before says, that there is such record of the appearance of him the said *Philip* before the justices of the said lady the queen remaining as the same *Philip* above by pleading hath alledged: and this he is ready to verify by that record: and the said *Philip* is order'd to have that record before the lady the queen at *Westminster* on _____ day next after _____ at his peril: the same day is given to the said parties there, &c.

Son assault.

AND the said *William* by *John Allen* his attorney comes and defends the force and injury when, &c. and as to the force and arms, and whatever that is against the peace of the said lady the now queen, and also the wounding and maiming in the declaration aforesaid specified, the same *William* says, that he is not guilty thereof: and of this he puts himself on the country: and the said *Edmund* thereof likewise, &c. And as to the residue of the trespass aforesaid above by him the said *William* supposed to be done, the same *William* says, that the said *Edmund* ought not to have or maintain his action aforesaid thereof against him, because he says, that the said *Edmund* at the same time when the residue of the trespass aforesaid is above supposed to be done, at *London* aforesaid, in the parish and ward aforesaid, with force and arms, &c. on him the said *William* did make an assault, and him the said *William* then and there would

would have beat, wounded and abused, unless he the said *William* had then and there immediately defended himself against the said *Edmund*, wherefore the said *William* did then and there defend himself against the said *Edmund*; and so the same *William* says, that if any damage or mischief then and there happen'd to the said *Edmund*, it was from the proper assault of him the said *Edmund* on him the said *William*, and in the defence of him the said *William*: and this the same *William* is ready to verify: wherefore he prays judgment if the said *Edmund* ought to have or maintain his action aforesaid thereof against him.

AND the said *Jane Goodwyn* by *John Allen* her attorney comes and defends the force and injury when, &c. and prays oyer of the writing obligatory aforesaid; and to her it is read in these words, to wit, know all men by these presents, that we *Thomas Sleigh* of *Leek* and *Micah Goodwyn* of *Leek* in the county aforesaid, blacksmith, are held and firmly bound to *William Charlton* in 200*l.* of lawful money of *England*, to be paid to the said *William* or his certain attorney, executors, administrators or assigns; to which said payment well and truly to be made we bind ourselves, and each of us by himself for the whole and in the whole, our and each of our heirs executors and administrators, firmly by these presents, sealed with our seals. Dated the 13th day of *February* in the 11th year of the reign of our lord *William the Third* now, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. and in the year of the Lord 1699. She likewise prays oyer of the condition of the same writing; and to her it is read in these words, to wit, the condition of this obligation is such, that if the above-bounden *Thomas Sleigh* and *Micah Goodwyn*, they, or either of them, their heirs, executors or administrators, do well and truly pay, or cause to be paid, unto the above-named *William Charlton*, his heirs, executors, administrators or assigns, the full and just sum of 100*l.* of lawful money of *England*, with interest at five pounds *per cent.* at or upon the 13th day of *February* next ensuing the date hereof, without fraud or farther delay, that then this present obligation to be void, or else to stand and remain in full force, power, strength, effect and virtue: which being read and heard, the same *Jane* says, that the said *William* ought not to have or maintain his action aforesaid thereof against her, because she says, that the said *Thomas Sleigh*, who in the writing obligatory aforesaid was jointly bound with the said *Micah* her late husband, after the said 13th day of *February* in the 11th year of the reign of the lord *William*, late king of *England*, &c. and before the day of the exhibition of the bill aforesaid, to wit, on the 20th day of *October* in the 7th year of the reign of the now queen, paid to the said *William* the said 100*l.* in the condition aforesaid mentioned, and all the interest therefore then due, according to the form and effect of the condition aforesaid, to wit, at *Leek* aforesaid in the county aforesaid: and this

Payment pleaded after the day.

[481]

4 A. c. 16.
§ 12.

this she is ready to verify : wherefore she prays judgment if the said *William* ought to have or maintain his action aforesaid thereof against her, &c.

Son assault specially.

AN D the said *William Grover* by *Benjamin Henshaw* his attorney comes and defends the force and injury when, &c. and as to the force and arms, and whatever that is against the peace of the said lady the now queen, the same *William Grover* says, that he is not guilty thereof : and of this he puts himself on the country : and the said *William Richardson* likewise, &c. And as to the residue of the trespass and assault aforesaid above supposed to be committed, the same *William Grover* says, that the said *William Richardson* ought not to have or maintain his action aforesaid thereof against him, because he says, that the said *William Richardson* and one *Richard Grisbrooke* on the day and year aforesaid in the declaration aforesaid above mentioned, at *Lewes* aforesaid in the county aforesaid, in and upon one *John Hodge* in the peace of God and of the said lady the queen then and there being did make an assault, and him did beat, wound and abuse, so that his life was despaired of : whereupon the same *William Grover*, as well to preserve the peace of the said lady the queen, as to separate the said *William Richardson* and *Richard Grisbrooke* from farther strife, and for the preservation of the life of the said *John Hodge*, did gently lay his hands on the said *W. Richardson* : and the same *W. Grover* farther says, that immediately after the laying of his hands on him the said *W. Richardson* in form aforesaid, and for the cause aforesaid done, the said *W. Richardson* thereupon then and there on him the said *W. Grover* did make an assault, and him would have beat, wounded and abused ; wherefore the said *William Grover* against the said *William Richardson* did then and there defend himself, and says, that if any damage or mischief then and there happened to the said *William Richardson*, it was from the proper assault of him the said *William Richardson* in form aforesaid committed, and in defence of him the said *William Grover*, which is the same assault, beating, wounding and abusing, whereof the said *William Richardson* above now complains : and this he is ready to verify : wherefore he prays judgment if the said *William Richardson* ought to have his action aforesaid thereof against him, &c.

The like by a constable.

AN D the said *William Traberne* by *John Lilly* his attorney comes and defends the force and injury when, &c. and as to the force and arms, and also the imprisonment and detention in prison of him the said *John White* for all the time aforesaid in the declaration aforesaid above mentioned, the same *William* says, that he is not guilty thereof : and of this he puts himself on the country : and the said *John* thereof likewise, &c. And as to the residue of the trespass aforesaid above supposed to be committed, the same *William* says, that the said *John* ought not to

have or maintain his action aforesaid thereof against him, because he says, that the said *John* the day and year aforesaid in the declaration aforesaid above mentioned, at *Stanslead* aforesaid in the county aforesaid; with force and arms, &c. on him the said *William* did make an assault, and him the said *William* would then and there have beat, wounded and abused, unless he the said *William* had then and there immediately defended himself against the said *John*; wherefore the said *William* did then and there defend himself against the said *John*; and so the same *William* says, that the mischief or damage, if any then and there happened to the same *John*, it was from the proper assault of him the said *John*, and in the defence of him the said *William*: and as the same *William* is ready to verify: wherefore he prays judgment if the said *John* ought to have or maintain his action aforesaid thereof against him, &c.

AND the said *Thomas* by *John Allen* his attorney comes and defends the force and injury when, &c. and prays *oyer* of the writing obligatory aforesaid; and it is read to him, &c. He says likewise *oyer* of the condition of the same writing obligatory; and it is read to him in these words, to wit, The condition of this obligation is such, that if the above-bound Sir *Thomas lepepyr* and *Robert Saunders*, or either of them, their or either their heirs, executors or administrators, do well and truly pay, or cause to be paid, unto the above named *Elizabeth Harris*, her executors, administrators or assigns, the full sum of 206 *l.* of good and lawful money of *England* on the 11th day of *April* next ensuing the date hereof, then this obligation to be void, or else remain in full force and virtue: which being read and heard, the same *Thomas* says, that the said *Elizabeth* ought not to have maintain her action aforesaid thereof against him, because he says, that the same *Thomas* did pay to the said *Elizabeth* the said 206 *l.* on the said 11th day of *April* next ensuing the date of the writing obligatory aforesaid, which he to the same *Elizabeth* on the same day ought to have paid, according to the form and effect of the said condition of the writing obligatory aforesaid, to wit, at *London* aforesaid in the parish and ward aforesaid: and as he is ready to verify: wherefore he prays judgment if the said *Elizabeth* ought to have or maintain her action aforesaid against him the said *Thomas*, &c.

[482]

Payment on the day.

Pettyward and Kent.

Middlesex, *MARY Pettyward*, widow, complains of *John Kent*, esq; and *Nicholas Fenn*, gent. executors of the last will and testament of *R. Kent*, esq; otherwise called *Richard Kent* of *Corsham* in the county of *Wilts*, esq; being in the custody of the marshal of the *Marshalsea* of the lord and lady king and queen before the king and queen themselves in a writ, that they render to her 2000 *l.* of lawful money of *England*

Debt on bond against two executors.

which they unjustly detain from her, for this, to wit, that whereas the said *Richard* in his life-time, to wit, on the 25th day of *March* in the year of the Lord 1690, at *Westminster* in the county of *Middlesex*, by his certain writing obligatory, sealed with the seal of the said *Richard* in his life-time, and to the count of the said lord and lady the king and queen now here shewn, the date whereof is the same day and year, did acknowledge himself to be held and firmly bound to the said *Mary* in the said 2000*l.* to be paid to the said *Mary* when he should be thereto after required: nevertheless the said *Richard* in his life-time, and the said *John* and *Nicholas*, or either of them, after the death of the said *Richard*, altho' often required, &c. the said 2000*l.* to the same *Mary* have not yet paid, nor hath either of them paid, but the said *Richard* in his life-time did altogether refuse to pay them to the same *Mary*, and the said *John* and *Nicholas*, after the death of the said *Richard*, do yet refuse to pay them to the same *Mary*, and unjustly detain them, to the damage of the said *Mary* 20*l.* And therefore she produces the suit, &c.

Judgment for
assets *in futuro*.
2 Co. 134.
2 Sand. 226.

And because the same *Mary Pettyward* cannot deny but that the said *John* and *Nicholas* have not, nor on the day of the exhibition of the bill of her the said *Mary*, or ever after, had any goods or chattels which belonged to the said *Richard* at the time of his death, in their hands to be administered, sufficient to satisfy the same *Mary* her debt aforesaid, she the same *Mary* prays judgment, and her debt aforesaid, to be adjudged to her, to be levied on the goods and chattels which belonged to the said *Richard* at the time of his death, which shall hereafter come to the hands of the said *John* and *Nicholas* to be administered: therefore it is considered, that the said *Mary* do recover against the said *John* and *Nicholas* her debt aforesaid, to be levied on the goods and chattels which belonged to the said *Richard* at the time of his death, and which shall hereafter come to the hands of them the said *John* and *Nicholas* to be administered: and the said *John* and *Nicholas* in mercy, &c.

The entry of a
bill of *Middle-*
sex.

Middlesex, **T**HE sheriff is commanded, that he take *Cornwall Bradshawe*, knt. if he shall be found in his bailiwick, and him safely keep, so that he may his body before the lord and lady the king and queen at *Westminster* on Monday next after the octave of *St. Hilary*, to answer to *Philip Burton*, esq; in a plea of trespass; and have there then this precept.

By bill

Henley.

[483]

On which day before the lord and lady the king and queen at *Westminster* comes the said *Philip Burton* in his proper person and the sheriff of *Middlesex*, to wit, *Thomas Lane*, knt. and *Thomas Cooke*, knt. returns, that the said *Cornwall Bradshawe* knt. is not found in his bailiwick; and the said *Cornwall* doth not come: therefore as before the sheriff is commanded, &c.

AND of this he puts himself on the country: and the said master and keepers, or wardens and commonalty of the mystery or art of braziers thereof likewise, &c. And upon this the said master and keepers, or wardens and commonalty of the mystery or art of braziers say, that *Robert Breedon*, knt. being now one of the sheriffs of the city of *London* afore said, is master of the said company of braziers, and for that reason the said master and keepers, or wardens and commonalty of the mystery or art of braziers, pray the writ of the lord the king to cause to come before the lord the king at *Westminster* 12, &c. to try the issue afore said above joined, to be directed to *Randolph Knipe*, knt. the other sheriff of the city of *London* afore said: and because the said *Leonard Martin* doth not deny it, therefore the same *Randolph Knipe*, knt. the said other sheriff of the city afore said, is commanded, that he cause to come before the lord the king at *Westminster* on day next after twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties afore said there, &c.

Suggestion that the plaintiff is one of the sheriffs of *London*, and the venire awarded to the other.

Ousnam and Gibson.

AND the said *John Ousnam* by *Thomas Harvey* his attorney comes and defends the force and injury, when, &c. and says, that the said *Richard Gibson* ought not to have or maintain his action afore said thereof against him, because he says, that the bill afore said of the said *Richard* was exhibited on the 23d day of *October* in the 3d year of the reign of the lady *Anne*, now queen of *England*, &c. and not before; and that he the same *John* at any time within six years next before the exhibition of the said bill of him the said *Richard* was not guilty of the premises above charged on him, as the said *Richard* above thereof against him complains: and this the same *John* is ready to verify: wherefore he prays judgment if the said *Richard* ought to have or maintain his action afore said thereof against him, &c.

Not guilty within six years.

21 Jac. c. 16. § 3.

AND the said *Thomas* in mercy, &c. Afterwards, to wit, on *Monday* next after three weeks of *St. Michael* in this same term, before the lady the queen at *Westminster* comes here into court *Shelley Wankford*, executor of the last will and testament of *Elizabeth Wankford* deceased, which said *Elizabeth* was executrix of the last will and testament of the said *Robert Wankford* her late husband also deceased, by *John Allen* his attorney, hereto specially constituted, and hath acknowledged that she is satisfied by the said *Thomas Gudmore* for the debt and damages afore said; therefore be the said *Thomas* for the said debt and damages thereof quit, &c. And the said *Shelley* produces here in court as well the letters testamentary of the said *Robert Wankford* afore said, whereby it sufficiently appears to the court here, that the said *Elizabeth* was the executrix of the will of the said *Robert Wankford*,

Satisfaction acknowledged in debt.

Wankford, and thereof had the administration, &c. as the letters testamentary of the said *Elizabeth* aforesaid; whereby it sufficiently appears to the court here, that he the said *Shelley* is the executor of the will of the said *Elizabeth*, and thereof hath the administration, &c.

*Nil dicit in
debt of the
same term
with the declaration*

AND the said *Richard Burgh* in his proper person comes and defends the force and injury when, &c. and upon this the said *Thomas Grice* prays that the said *Richard Burgh* to his declaration aforesaid may answer; and hereupon the said *Richard* prays leave to imparl to the bill aforesaid of him the said *Thomas* until *Saturday* next after the octave of the purification of the blessed virgin *Mary*; and to him it is granted, &c. The same day is given to the said *Thomas* there, &c. On which day before the said lord the king at *Westminster* comes the said *Thomas Grice* by his attorney aforesaid; and the said *Richard Burgh*, altho' on the same day solemnly called, doth not come, nor say any thing in bar or preclusion of the action aforesaid of him the said *Thomas Grice*, but hath made default, whereby the same *Thomas Grice* remains against the said *Richard* therein undefended: therefore it is considered, that the said *Thomas Grice* do recover against the said *Richard Burgh* his debt aforesaid, and also

[484]

for his damages which he hath sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in this behalf expended, to the same *Thomas Grice* by the court of the said lord the king now here with his assent adjudged: and the said *Richard Burgh* in mercy, &c.

Crosse and Lewis.

Non suit in replevin for want of a replication to the avowry.

TO be adjudged to him, &c. And upon this the said *Thomas Crosse* prays that the said *John Lewis* may plead in bar to the avowry aforesaid of him the said *Thomas*; whereupon day next after is given by the court of the said lady the queen now here to the said *John Lewis* to reply to the said plea of the said *Thomas Crosse*, and the said *John Lewis* is order'd by the court of the said lady the queen now here to reply on the same day to that plea at his peril: on which day before the lady the queen at *Westminster* comes the said *Thomas* by his attorney aforesaid; and the said *John Lewis*, tho' on the same day solemnly called, doth not come, nor hath replied to the plea of the said *Thomas Crosse*, nor farther prosecuted his writ aforesaid against the same *Thomas Crosse*: therefore it is considered, that the same *John Lewis* do take nothing by his writ aforesaid, but that he and his pledges to prosecute, to wit, *John Doe* and *Richard Roe*, be therefore in mercy, and the said *Thomas Crosse* go thereof without day, &c. And it is farther considered by the court of the said lady the queen now here, that the said *Thomas Crosse* do recover against the said *John Lewis* for his costs and charges by him about his defence in this behalf sustained, to

*Judgment for the defendant.
7 H. 8. c. 4.
21 H. 8. c. 19.*

the said *Thomas Crosse*, by the court of the said lady the queen, according to the form of the statute thereof lately made and provided, adjudged, &c. And that the said *Thomas Crosse* have execution, &c.

Bagnley and Chiswell.

BE it remember'd, that on the 10th day of *February* in the fifth year of the reign of the lady *Anne*, now queen of *England*, &c. at the court of the said lady the queen, then held before *Robert Bedingfield*, knt. mayor of the city of *London*, and the aldermen of the said city, in the chamber of the *Guildhall* of the same city, situate in the parish of *St. Michael Bassishawe* in the ward of *Bassishawe*, *London*, aforesaid, one *William Bagnley* in his proper person came, and then and there, according to the custom of the city aforesaid, affirmed in the same court his certain bill original against one *Richard Chiswell*, by the name of *Richard Chiswell* defendant, at the suit of him the said *William Bagnley* plaintiff, in a plea of trespass on the case to the damage of 5000*l.* And thereupon then and there the said *William Bagnley* found pledges to prosecute his bill original aforesaid against the same *Richard Chiswell*, to wit, *John Doe* and *Richard Roe*, citizens of *London*; which said *Richard Chiswell*, because he had nothing within the liberty of the city of *London* whereby according to the custom of the city aforesaid he could be summoned, as, &c. afterwards, to wit, on the 11th day of *February* in the fifth year aforesaid, by virtue of a certain precept of the said mayor and aldermen to one *Thomas Hewitt*, one of the serjeants at mace of the said mayor and aldermen, and minister of the court aforesaid, to him therefore made by the same serjeant at mace, was taken and arrested, and to the court aforesaid for the cause aforesaid brought, when he then and there found bail and was bailed by *Richard Chiswell* and *William Hollyer*, citizens of the city aforesaid, to have the body of the said *Richard Chiswell* at the court of the said lady the queen, before the said mayor and aldermen in the said chamber of the *Guildhall* of the city aforesaid, on the 12th day of *February* aforesaid, according to the custom of the city aforesaid to be held, to answer to the said *William Bagnley* in the plea of his bill original aforesaid, according to the custom of the city aforesaid, and so from thence from court to court to the end of that plea; and the same day was then and there given by the same court to the said *William Bagnley* to be there, &c. At which said court before the said mayor and aldermen in the said chamber of the *Guildhall* of the city aforesaid, on the said 12th day of *February*, according to the custom of the city aforesaid then held, the said *Richard Chiswell* in his proper person appeared, and put in his place *Edmund Whinsep* his attorney, and by his same attorney offered himself against the said *William Bagnley* in the plea of the bill original aforesaid; but the same *William Bagnley*, altho' he was solemnly called in the court aforesaid, did not appear; whereupon, at the prayer of

Non suit for not declaring in the mayor's court.

[485]

Judgment for
the defendant.

of the said *Richard Chiswell* by his attorney aforesaid to the court aforesaid made, it was order'd by the same court, that the said *William Bagnley* should have until the court of the said lady the queen before the said mayor and aldermen in the said chamber of the *Guildhall* of the city aforesaid on the twenty-eighth day of *April* in the sixth year of the reign of the said lady the queen of *Great Britain*, &c. according to the custom of the city aforesaid to be held, to declare peremptorily against the same *Richard Chiswell*; and the same day was then and there given by the same court to the said *Richard Chiswell* to be there, &c. At which said court of the said lady the queen before the said mayor and aldermen in the said chamber of the *Guildhall* of the city aforesaid on the said 28th day of *April*, according to the custom of the city aforesaid held, the said *Richard Chiswell* by his attorney aforesaid appeared, and then and there in the same court, at the prayer of the said *Richard Chiswell* by his attorney aforesaid to the court aforesaid made, the said *William Bagnley* was solemnly called, and did not appear, but made default: therefore it is considered by the court aforesaid, that the said *William Bagnley* do take nothing by his original bill aforesaid, and that the said *Richard Chiswell* do go thereof quit without day, &c. and that the said *Richard Chiswell* do recover against the said *William Bagnley* 8 s. 8 d. for his costs and charges by him in the defence of the suit aforesaid expended, &c.

An inquirv ta-
ken by a former
sheriff and re-
turned by his
successor.

UNDER the seals, &c. and the seals, &c. On which day here comes the said *Henry* by his attorney aforesaid; and the sheriffs, to wit, *John Bull*, knt. and *Thomas Ambrose*, esq; now return here a certain inquisition before *Peter Delme*, knt. and *Harcourt Masters*, knt. late sheriffs of the city of *London*, their predecessors, at the *Guildhall* of the city of *London*, situate in the parish of *St. Lawrence* in the *Old Jewry*, in the ward of *Cheape* of the same city on the 29th day of *July* last past, by the oath of 12, &c. taken, and by the same late sheriffs on their going out of their office to the same now sheriffs, together with the writ aforesaid, returned and delivered, whereby it is found that the said *Henry* hath sustained damage by reason of the premisses, besides his costs and charges by him about his suit in this behalf expended, to 67 l. 4 s. 9 d. and for those costs and charges to 27 s. 4 d. Therefore, &c.

Yet of Easter term. Witnefs J. Holt, knt.

The form of
the entry of a
judgment by
confession on
the roll.

London, BE it remember'd, that on *Wednesday* next after five to wit. weeks of *Easter* in this same term before the lord the king at *Westminster* came *Mary Vincent*, widow, by *Benjamin Henshaw* her attorneay, and produced in the court of the said lord the king then there her certain bill against *William Grey*, gent. in the custody of the marshal, &c. in a plea of debt; and there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*; which

which said bill follows in these words, to wit, *London*, to wit, *Mary Vincent*, widow, complains of *William Grey*, gent. being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, in a plea that he render to her 2000 *l.* of lawful money of *England*, which he owes her and unjustly detains, for this, to wit, that whereas the said *William* on the 11th day of *May* in the 9th year of the reign of the lord *William the Third*, now king of *England*, &c. at *London* aforesaid, to wit, in the parish of *St. Mary le Bow*, in the ward of *Cheape*, borrowed of the said *Mary* the said 2000 *l.* to be paid to the same *Mary* when he should be thereto after required: nevertheless the said *William*, altho' often required, &c. the said 2000 *l.* to the same *Mary* hath not yet paid, but them to her hitherto to pay hath altogether denied, and yet doth deny, to the damage of her the said *Mary* 100 *l.* And therefore she produces the suit, &c.

And the said *William* by *John Lilly* his attorney comes and defends the force and injury when, &c. and says, that he cannot deny the action of the said *Mary* aforesaid, nor but that he doth owe to the said *Mary* the said 2000 *l.* in manner and form as the said *Mary* above against him complains: therefore it is considered, that the said *Mary* do recover against the said *William* her debt aforesaid, and also 60*s.* for her damages which she hath sustained, as well by reason of the detention of that debt as for her costs and charges by her about her suit in this behalf expended, to the same *Mary* by the court of the said lord the king now here with her assent adjudged: and the said *William* in mercy, &c.

Signed 12 May
1697.

Roll 245.

Holt. Ventris.

Slate and Freeman.

[486]

Afterwards, to wit, on *Wednesday* next after 15 days of *Easter* in *Easter* term in the second year of the reign of the lord the now king before the same lord the king at *Westminster* comes the said *Thomas Slate* by *John Allen* his attorney, hereto specially constituted, and acknowledges he is satisfied by the said *John* for the damages, costs and charges aforesaid; therefore be the said *John Freeman* from those damages, costs and charges quit, &c.

Satisfaction acknowledged.

WHEREBY it is found, that the said *Andrew* hath sustained damages by reason of the premises, besides his costs and charges by him about his suit in this behalf expended, on the first promise, to 20 *l.* on the second promise to 1 *d.* on the third promise to 1 *d.* on the fourth promise to 1 *d.* and on the fifth promise to 1 *d.* and for those costs and charges to 20 *s.* And hereupon the said *Andrew* freely here in court remits to the said *John* the said 1 *d.* by reason of the non-performance of the said second promise and assumption, and also the said, &c. by the

A remission of several damages.

inquisition aforesaid in form aforesaid found; therefore be the said *John* of the said several one pennies quit: therefore no regard being had to the said several one pennies in form aforesaid remitted, it is considered, that the said *Andrew* do recover against the said *John* the residue of the damages aforesaid by the inquisition aforesaid in form aforesaid found, and also for his costs and charges aforesaid to the same *Andrew* by the court of the said lord the king now here with his assent of increase adjudged; which said damages in the whole amount to And the said *John* in mercy, &c.

Plea, had nothing in the tenements on several demises. Tho. 153. 2 Ven. 251. Cro. Jac. 312. Yelv. 227.

AND the said *John Lovegrove* by *John Allen* his attorney comes and defends the force and injury when, &c. and says, that the said *Mary Hughes* ought not to have or maintain her action aforesaid thereof against him, because he says, that the said *Mary* at the times of the demises aforesaid above supposed to be made, had nothing in the several tenements aforesaid with the appurtenances, nor in any parcel thereof, whereof those demises are supposed to be made: and this he is ready to verify: wherefore he prays judgment if the said *Mary* ought to have or maintain her action aforesaid thereof against him, &c.

A remission of part of the damages after a verdict.

SAY on their oath, that the said *Thomas* did assume on himself in manner and form as the said *Edward* within against him complains; and they assess the damages of him the said *Edward*, by reason of the non-performance of the promise and assumption within mentioned, besides his costs and charges by him about his suit in this behalf expended, to 32 l. 14 s. 6 d. and for those costs and charges to 53 s. 4 d. And hereupon the said *Edward* freely here in court remits to the said *Thomas* 10 l. 10 s. 6 d. parcel of the damages aforesaid, and the costs and charges in this behalf expended, and prays judgment may be given for him for the residue of the damages aforesaid, &c. whereupon the 10 l. 10 s. 6 d. being deducted and defaulted, it is considered, that the said *Edward* do recover against the said *Thomas* 24 l. 17 s. 4 d. the residue of the damages aforesaid, by the jurors aforesaid in form aforesaid assessed, and also 11 l. 2 s. 8 d. to the same *Edward* at his request for his costs and charges aforesaid by the court here of increase adjudged; which said damages in the whole amount to 36 l. And the said *Thomas* in mercy: and be the said *Thomas* of the said 10 l. 10 s. 6 d. so as aforesaid remitted quit, &c.

[487]
A remission of damages after an inquiry.

ON which day here comes the said *Gavin* by his attorney aforesaid; and the sheriffs, to wit, *John Fryer*, bart. and *John Ward*, knt. now return here a certain inquisition taken before them at the Guildhall of the said city of London, situate in the parish of St. Lawrence in the Old Jewry in the ward of Cheape of the same city on the 2d day of June last past, by which it is found that the said *Gavin* hath sustained damages by reason of the

the non-performance of the first and second promise, besides his costs and charges by him about his suit in this behalf expended, to 2 *d.* and also damages by reason of the non-performance of the last promise, besides his costs and charges by him about his suit in this behalf expended, to 100 *l.* 8 *s.* 8 *d.* and for those costs and charges to 27 *s.* 4 *d.* And hereupon the said *Gavin* freely here in court remits to the said *T.* the said 2 *d.* on the first and second promise afore said by the inquisition afore said in form afore said found, and the costs and charges in that behalf expended, and prays judgment against the said *Thomas* for the said 100 *l.* 8 *s.* 8 *d.* the residue of the damages afore said, and for the said 27 *s.* 4 *d.* for the costs and charges afore said, by the inquisition afore said in form afore said found, and the increase of the same, to be adjudged to him, &c. Therefore the said 2 *d.* remitted being deducted and defaultked, it is considered, that the said *Gavin* do recover against the said *Thomas* the said 100 *l.* 8 *s.* 8 *d.* by reason of the non-performance of the said last promise by the inquisition afore said in form afore said found, and the said 27 *s.* 4 *d.* for the costs and charges afore said by the same inquisition in form afore said likewise found, and also 8 *l.* 4 *s.* to the same *Gavin* at his request for his costs and charges afore said by the court here of increase adjudged; which said damages in the whole amount to 110 *l.* And the said *Thomas* in mercy, &c. And be the said *Thomas* of the said 2 *d.* in form afore said deducted quit, &c.

WHEREBY it is found, that the said governor and company of the bank of *England* have sustained damages by reason of the non-performance of the said first promise, besides their costs and charges by them about their suit in this behalf expended, to 1 *d.* and also damages by reason of the non-performance of the said second promise, besides their costs and charges by them about their suit in this behalf expended, to 532 *l.* 15 *s.* 3 *d.* and for those costs and charges to 27 *s.* 4 *d.* And hereupon the said governor and company freely here in court remit to the said *Thomas* the said 1 *d.* upon the first promise afore said by that inquisition in form afore said found, and pray judgment against the said *Thomas* for the said 532 *l.* 15 *s.* 3 *d.* the residue of the damages afore said, and for the said 27 *s.* 4 *d.* for the costs and charges afore said by that inquisition in form afore said found, and the increase of the same, to be adjudged to them, &c. Therefore the said 1 *d.* remitted being deducted and defaultked, it is considered, that the said governor and company do recover against the said *Thomas* the said 532 *l.* 15 *s.* 3 *d.* by reason of the non-performance of the said second promise by the inquisition afore said in form afore said found, and the said 27 *s.* 4 *d.* for the costs and charges afore said by the same inquisition in form afore said likewise found, and also 13 *l.* 7 *s.* 5 *d.* to the same governor and company at their request for their costs and charges afore said by the court here of increase adjudged; which said

Another way.

A venire awarded as well to try the issue as to inquire of damages, if, &c.

Nolle prosequi as to the issue.

[488]

Judgment for the plaintiffs on the demurrer.

faid damages in the whole amount to 547 *l.* 10 *s.* And the faid *Thomas* in mercy, &c. And be the faid *Thomas* of that 1 *d.* in form aforefaid deducted quit, &c.

But becaufe the court of the faid lord the king now here are not yet advifed to give their judgment of and upon the premiffes, whereof the parties aforefaid have put themfelves on the judgment of the court, day therefore is given to the parties aforefaid before the lord the king at *Westminfter* until day next after

to hear their judgment of and upon thofe premiffes, becaufe the court of the faid lord the king now here thereof not yet, &c. And as to try as well the iffue aforefaid between the parties aforefaid above joined to be tried by the country, as to inquire what damages the faid governor and company of the bank of *England* have fufained by reason of the premiffes, whereof the parties aforefaid have put themfelves on the judgment of the court, if judgment happens to be thereon given for the faid governor and company of the bank of *England* againft the faid *Henry*, let a jury thereon come before the lord the king at *Westminfter* on the faid day; and who neither, &c. to recognize, &c. becaufe as well, &c. The fame day is given to the parties aforefaid there, &c. On which day before the lord the king at *Westminfter* come as well the faid governor and company of the bank of *England*, as the faid *Henry* by their attornies aforefaid; and the fame governor and company of the bank of *England* have acknowledged here in court, that they will not farther profecute againft him the faid *Henry*, as to the fecond promise and affumption in the declaration aforefaid above mentioned; and as to the faid firft promise and affumption in the declaration aforefaid above mentioned, whereof the parties aforefaid have put themfelves on the judgment of the court, becaufe the court of the faid lord the king now here are not yet advifed to give their judgment of and upon thofe premiffes, day therefore is given to the parties aforefaid before the lord the king at *Westminfter* until

day next after to hear their judgment thereon, becaufe the court of the faid lord the king now here thereof not yet, &c. On which day before the lord the king at *Westminfter* come the parties aforefaid by their attornies aforefaid; whereupon the premiffes aforefaid, as to the firft promise and affumption in the declaration aforefaid above mentioned, whereof the parties aforefaid have put themfelves on the judgment of the court, being feen, and by the court of the faid lord the king now here more fully underftood, becaufe it feems to the court of the faid lord the king now here, that the declaration aforefaid, and the matter in the fame contained, as to that firft promise and affumption, are good and fufficient in law to maintain the action of them the faid governor and company aforefaid thereof againft the faid *Henry Darley* had, it is confidered, that the faid governor and company ought to recover their damages againft the faid *Henry*: but becaufe it is unknown to the court of the faid lord the king now here what damages the faid governor

nor and company have sustained by reason of the premises aforesaid, therefore the sheriffs are commanded, that by the oath of good and lawful men of their bailiwick they diligently inquire what damages the said governor and company have sustained, as well by reason of the non-performance of the first promise and assumption aforesaid, as for their costs and charges by them about their suit in this behalf expended; and the inquisition which, &c. return to the said lord the king at *Westminster* on under the seals, &c. and the seals, &c. together with the writ of the said lord the king to them therefore directed: the same day is given to the said governor and company there, &c.

An inquiry awarded.

WHEN, &c. and say, that the articles of agreement aforesaid in the declaration aforesaid above mentioned are not their deed: and of this they put themselves on the country: and the said *Francis* thereof likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Wednesday* next after three weeks of *St. Michael*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Not their deed pleaded to articles.

Afterwards, to wit, on *Thursday* next after a month of *St. Michael* thence next ensuing before the lord the king at *Westminster* come the said governor and company in their proper persons, and acknowledge they have received of the said *Robert* 50*l.* 14*s.* 6*d.* parcel of the debt and damages aforesaid; and the said *Robert* then present here in court, at the petition of the said governor and company, by the court of the said lord the king now here, is committed to the custody of the marshal of the *Marshalsea* of the said lord the king, before the king himself in execution for 111*l.* 18*s.* 6*d.* being the residue of the debt and damages aforesaid.

A commitment in execution in K. B. where the plaintiff hath received part of the debt.

Brooke and Taylor.

London, **H**ENRY *Brooke* the younger, who was arrested to wit. by virtue of a certain plaint levied in the court of the lady *Anne* the late queen, held at *London* aforesaid in the *Guildhall* of the same city on the 23d day of *November* in the 12th year of the reign of the said late queen, before *J. S.* esq; one of the sheriffs of the city of *London* aforesaid, against him the said *Henry*, at the suit of *John Taylor*, in a certain plea of trespass on the case, to the damage of the said *John* 500*l.* and for want of sufficient bail and security to answer to the said *John* in the plea aforesaid, was detained in the prison of the said late lady the queen, under the custody of the said *Joshua Sharpe*, esq; then one of the sheriffs of the city aforesaid for the cause aforesaid: and afterwards, to wit, on the 10th day of *December* in the 12th year above said, the same *Henry*, by virtue of a certain writ of the said lady the late queen of *habeas corpus cum causa*, to the mayor

Non suit for not declaring after ter the cause removed by *habeas corpus*.

[489]

mayor and aldermen and the sheriffs of the city of *London* directed, and out of the court of the said lady the late queen, before the said late queen herself at *Westminster* in the county of *Middlesex* issuing, by the said *Josbua Sharpe*, then one of the sheriffs of the city aforesaid, afterwards, to wit, on the same 10th day of *December* in the 12th year aforesaid, was brought before *Robert Eyre*, knt. one of the justices of the said lady the late queen, assigned to hold pleas in the court of the said late queen, before the late queen herself, at his chambers situate in *Chancery-lane, London*, and then and there for want of bail and security to answer to the said *John Taylor* in the plea aforesaid, was by the same justice committed to the custody of the marshal of the *Marshalsea* of the court of the said late lady the queen before the queen herself, at the suit of the said *John Taylor* in the plea aforesaid; and the said *H.* so being in the custody of the marshal of the *Marshalsea* aforesaid, the said *J. T.* in the same court of the said late lady the queen before the queen herself, his bill or declaration in any action whatever within three terms after the commitment of him the said *Henry* to the custody of the marshal of the *Marshalsea* aforesaid, at the suit of the said *John* as aforesaid hath not exhibited, nor his plaint aforesaid against the said *Henry* farther prosecuted: therefore it is considered, that the said *John* do take nothing by his plaint aforesaid, but that he and his pledges to prosecute, to wit, *John Doe* and *Richard Roe*, be therefore in mercy, and the said *Henry* go thereof without day, &c.

Non suit for not
declaring in re-
plevin.

Surry, **G**EOERGE Hagar was summoned to answer to to wit. *Anna Maria Symonds* in a plea, why he took the goods and chattels of the said *Anna Maria*, to wit, four tons of rags, gimnells, ropes and seamens' beads, and 500 weight of cordage, and them unjustly detained, against surety and pledges, &c. And whereon the same *George* hath in his proper person offered himself the fourth day against the said *Anna Maria* in the plea aforesaid, and the same *Anna Maria*, altho' solemnly called, doth not come, but hath made default, and was plaintiff: therefore it is considered, that the said *George Hagar* do go thereof without day, &c. And that the said *Anna Maria* and her pledges to prosecute, to wit, *John Doe* and *Richard Roe*, be in mercy, &c. 2. The names of the pledges, &c. and that the said *George* have a return of the goods and chattels aforesaid, &c.

A discontinu-
ance after an
issue.

T Herefore let a jury thereon come before the lady the queen at *Westminster* on *Wednesday* next after three weeks of the holy *Trinity*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards, to wit, on *Friday* next after the morrow of the holy *Trinity* then next following before the lady the queen at *Westminster* comes the said *Thomas Tourle* by his attorney aforesaid;

aforesaid; and the said *Samuel Swane* then and there his bill aforesaid against the said *Thomas* did not prosecute with effect, but hath permitted his suit aforesaid to be discontinued for want of prosecution, &c.

Minter and others at the suit of Brett.

WHEN, &c. and say, that they are not guilty of the premisses above charged on them, as the said *John Brett* above thereof against them complains: and of this they put themselves on the country: and the said *John Brett* thereof likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Saturday* next after and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the proceedings thereof between the parties aforesaid in the plea aforesaid being continued, by the jury being put thereof between them in respite before the lord the king at *Westminster*, until *Wednesday* next after 15 days of *Easter*, unless the justices of the lord the king assigned to take assises in the county aforesaid, first come on *Monday* 24th day of *March*, at *Bury St. Edmonds*, in the county aforesaid, by the form of the statute, &c. for want of jurors, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; and the said justices of the said lord the king of assise, before whom, &c. have sent here their record before them had in these words, to wit, afterwards the day and place within contained, before *P. King*, knt. chief justice of the lord the king of the bench, and *R. Eyre*, knt. one of the justices of the said lord the king, assigned to hold pleas before the king himself, justices of the same lord the king, assigned to take assises in the county of *Suffolk*, by the form of the statute, &c. come as well the within named *John Brett* as the within written *John Minter*, *Thomas Hamond* and *T. French*, by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called likewise come, who to say the truth of the within contained, were elected, tried and sworn: and afterwards at the assises aforesaid in the county aforesaid, one of the jurors aforesaid, to wit, *A. H.* with the assent as well of the said *J. B.* as of the said *J. M.* *T. H.* and *T. F.* by the court here from the panel within written is wholly withdrawn, and the residue of the jurors aforesaid from giving any verdict of and upon the premisses, with the assent as well of the said *John Brett*, as of the said *John Minter*, *T. Hamond* and *T. French*, by the justices aforesaid are discharged: therefore the jury aforesaid are farther put in respite before the lord the king at *Westminster* until *Friday* next after the morrow of the holy *Trinity*, for want of jurors, &c. Therefore let the sheriff have the bodies, &c. and add ten such &c. The same day is given to the parties aforesaid there, &c. On which day before the lord the king at *Westminster*

Not guilty in trespass.

Venue awarded.

The postea.

A juror withdrawn in order to have a view

Decem taken

[490]

After come the parties aforesaid by their attornies aforesaid; and the sheriff hath not returned the writ thereof; therefore the jury aforesaid are farther put in respite before the lord the king at *Westminster* until *Monday* next after three weeks of *St. Michael*, for want of jurors, &c. Therefore let the sheriff have the bodies, &c. and add ten such, &c. The same day is given to the parties aforesaid there, &c. On which day before the lord the king at *Westminster* comes as well the said *J. Brett* as the said *J. Minter*, *T. Hamond* and *T. French*, by their attornies aforesaid; and the sheriff, to wit, *J. C. esq;* now returns, that as to the distraining the said *J. Pitches* and the rest of the jurors in the writ of the said lord the king to him directed named, that writ was delivered to him so late, that by reason of the shortness of the time he could cause no execution to be made thereof; but as to the adding ten such, whereof mention was made in the same writ, the same sheriff now returns, that the execution thereof appears in a certain schedule to the same writ annexed, in which said schedule is contained a panel of the names of ten jurors, of whom none, &c. Therefore the jury aforesaid are farther put in respite before the lord the king at *Westminster* until *Wednesday* next after 15 days of *Easter*, unless the justices of the said lord the king, assigned to take assises in the county aforesaid, first come on *Monday* 26th day of *March* at *Bury St. Edmunds* in the county aforesaid, by the form of the statute, &c. for want of jurors, &c. therefore let the sheriff have the bodies, &c. The same day is given to the parties aforesaid there, &c. On which day before the lord the king at *Westminster* comes the said *J. Brett* by his attorney aforesaid; and the said justices before whom, &c. have sent here their record before them had in these words, to wit, Afterwards at the day and place within contained, before *P. King*, knt. chief justice of the lord the king of the bench, and *R. J. esq;* this time associated to the same *P. King* and *T. Bury*, knt, one of the barons of the exchequer of the said lord the king, justices of the said lord the king, assigned to take assises in the county of *Suffolk*, by the form of the statute, &c. the presence of the said *T. Bury*, knt. being not expected, by virtue of the writ of the said lord the king of *si non omnes*, &c. come as well the within named *J. Brett* as the within written *J. Minter*, *T. Hamond* and *T. French*, by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called likewise come, who to say the truth of the within contained being elected, tried and sworn, say on their oath, that the said *J. Minter*, *T. Hamond* and *T. French*, are guilty of the trespass aforesaid, as the said *J. Brett* within against them complains; and they assess the damages of the said *J. Brett* on the account within contained, besides his costs and charges by him about his suit in this behalf expended, to 81*l.* and for those costs and charges to 40*s.* And upon this the said *J. Brett* says, that after the last continuance of the plea aforesaid, to wit, after the said *Monday* next after and before the

The postea.

Verdict for the plaintiff.

Suggestion of the death of one of the defendants.

the said *Wednesday* next after 15 days of *Easter*, to wit, on the first day of *April* in the second year of the reign of the said lord the now king, the said *T. Hamond*, at the parish of *Nettlestead* afore said in the county afore said died, and this is not denied, therefore let all farther proceedings against the said *T. Hamond* cease; whereupon the said *J. Brett* prays judgment against the said *J. Minter* and *T. French* for the damages, costs and charges afore said, by the jury afore said in form afore said assessed, together with an increase of the same, to be adjudged to him, &c. Therefore it is considered, that the said *J. Brett* do recover against the said *J. Minter* and *T. French* the damages afore said by the jurors afore said in form afore said assessed, and also 77 l. for his costs and charges afore said to the same *J. Brett*, by the court of the said lord the king now here with his assent of increase adjudged; which said damages in the whole amount to 160 l. &c.

Judgment
against the
others.

And upon this before the said lord the king at *Westminster* come the said *J. Minter* and *T. French* by *B. D.* their attorney, and produce here in the court of the said lord the king before the king himself, a certain writ of error of and upon the judgment and premisses afore said, which follows in these words, to wit, *George*, &c. To our justices, assigned to hold pleas before us, greeting: because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before us by bill, between *J. Brett* and *J. Minter*, *T. Hamond* and *T. French*, of a certain trespass, to the same *J. Brett* by the said *J. T.* and *T.* committed, which said *T. Hamond* is dead, as it is said, a manifest error hath happened, to the great damage of them the said *J. Minter* and *T. French*, as by their complaint we have understood: we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties afore said in this behalf, command you, that the record and proceedings afore said, which before us now remain, as it is said, being inspected, you farther cause to be done therein to correct that error, what of right and according to the law and custom of *England* shall be to be done. Witness ourself at *Westminster*, &c. And upon this the said *J. Minter* and *T. French* say, that in the record and proceedings afore said, and also in the rendition of the judgment afore said, there is manifest error, in this, to wit, that where by the record afore said in the court here now remaining it appears, that in the said *Hilary* term in the first year of the reign of the lord the now king, the said *Thomas French*, one of the defendants in the plea afore said, in the same court here by *E. G.* his attorney appeared and pleaded to issue in the plea afore said: nevertheless at the said time when the said *T. French* by his attorney afore said in form afore said pleaded, the same *Thomas French* was under the age of 21 years, to wit, of the age of 20 years and one month and no more, in which case the said *Thomas French* by the law of the land could not constitute an attorney to defend or plead for him the

Error coram
nobis.

[491]
Nonage assigned,

Scire facias
awarded.

Repl' full age.

Demurrer.

The causes.

the said *Thomas French*, at the suit of the said *John Brett* in the plea aforesaid, but ought to have pleaded and defended in the same plea by his guardian : and because the said *Thomas French*, being under age, in form aforesaid by his attorney aforesaid, at the suit of the said *John Brett* hath pleaded and defended, and not by his guardian, as by law he ought ; therefore in that there is manifest error : and this they are ready to verify : wherefore they pray that the judgment aforesaid for that error may be reversed, annulled and held as intirely void, and that they to all things, which by reason of the judgment aforesaid they have lost, may be restored ; and they pray the writ of the said lord the now king to warn the said *John Brett* to be before the lord the king to hear the record and proceedings aforesaid ; and to them it is granted ; whereby the sheriff of *Suffolk* is commanded, that by good, &c. he give notice to the said *John Brett*, that he be before the lord the king on *Friday* next after the morrow of the holy *Trinity*, to hear the record and proceedings aforesaid, if, &c. and farther, &c. The same day is given to the said *John Minter* and *Thomas French*, &c. On which day before the lord the king at *Westminster* come the said *John Minter* and *Thomas French* by their attorney aforesaid ; and the sheriff of the county aforesaid hath not returned thereof the writ, nor done any thing therein ; and upon this the said *John Brett* by *John Allen* his attorney immediately comes and says, that for any reason of error aforesaid by the said *John Minter* and *Thomas French* above assigned, the judgment aforesaid ought not to be reversed, annulled or held as intirely void, because he says, that the said *Thomas French* at the time of his appearance and pleading to issue by his attorney aforesaid in form aforesaid, to wit, in *Hilary* term in the first year of the reign of the said lord the now king, &c. was of the full age of 21 years and more, and not under the age of 21 years, as the said *John Minter* and *Thomas French* above thereof for themselves have alledged : and of this he puts himself on the country.

And the said *John Minter* and *Thomas French* say, that the plea aforesaid by the said *John Brett* above in pleading alledged, and the matter in the same contained, are not sufficient in law to preclude them the said *John Minter* and *Thomas French* from the reversal and annulling of the judgment aforesaid ; and that they the said *John Minter* and *Thomas* to that plea have no necessity, nor are by the law of the land obliged in any manner to answer ; wherefore for want of a sufficient plea of the said *John Brett*, the same *John Minter* and *Thomas* pray judgment, and that the judgment aforesaid for the error aforesaid by them above assigned may be reversed, annulled and held as intirely void, and that they to all things, which by reason of the judgment aforesaid they have lost, may be restored ; and for cause of this demurrer in law, the same *John Minter* and *Thomas*, according to the form of the statute in such case lately made and provided, do set down, and to the court here express these causes following, to wit, that in the plea aforesaid of him the said *John Brett* it is

not

not alledged in what town or county or in what place the same *Thomas French* in the record of the judgment aforesaid mentioned was of full age, from whence any jury to try the issue thereon could arise or come, so that the said issue cannot duly or according to the course of law be tried, and that the said plea is informal, insensible, and contains in it false, incongruous and barbarous *Latin*.

And the said *John Brett*, for that he hath above in pleading alledged sufficient matter in his plea aforesaid to preclude the said *John Minter* and *Thomas* from the reversal and annulling of the judgment aforesaid, which he is ready to verify; which said matter the said *John Minter* and *Thomas French* do not deny, nor thereto in any wise answer, but that averment do altogether refuse to admit, prays judgment, and that the judgment aforesaid may be in all things affirmed, &c. And because the court of the lord the king here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the lord the king at *Westminster* until to hear their judgment thereon, because the court of the said lord the king here thereof not yet, &c.

Joinder.

Judgment was given for the plaintiff.

Bluet and Saunders.

[492]

ARE added anew, whose names are annexed to the panel within written, according to the form of the statute in such case made and provided; and the jurors so added anew, to wit, *John Roach*, &c. being called likewise come, who to say the truth of the within contained, together with the other jurors aforesaid hereto first impanelled and sworn, were elected, tried and sworn; and because the sheriff had not jurors enough to view the place in question, according to the command of the writ within written, and it seems convenient for the parties aforesaid, that a view of the place in question be farther had by more jurors before the trial of the issue aforesaid, therefore *A. Saunders*, the last of the jurors aforesaid, by the command of the justices aforesaid, and with the assent of the parties aforesaid, from the panel aforesaid is withdrawn, and the residue of the jurors of the jury aforesaid from now giving any verdict on the within contained are discharged; therefore the jury aforesaid is farther respited here until from the day of the holy *Trinity* in three weeks, for want of jurors, because none come: therefore let the sheriff as before have the bodies, &c. and add ten such, &c. On which day here comes as well the said *Robert* as the said *Mary* and *William* by their attornies aforesaid; and the sheriff, to wit, *R. N.* esq; now returns here, that as to distrain *Andrew Quick*, and the residue of the jurors in the writ of the lord the king to him directed named, that writ was so late delivered to him, that by reason of the shortness of time he could cause no execution to

The entry of a view before trial according to the old way.
C. B.

Juror withdrawn.

be made thereof; but as to the adding ten such, whereof in the same writ mention was made, the same sheriff now returns here, that the execution thereof appear'd in a certain schedule to that writ annexed, in which said schedule is contained a panel of the names of ten such whereof none, &c. Therefore the jury aforesaid is farther respited here until from the day of *St. Michael* in three weeks, unless the justices of the said lord the king, assigned to take assises in the county aforesaid, by the form of the statute, &c. first come on *Monday* the sixth day of *August*, at the castle of *Exon* in the county aforesaid, for want of jurors, &c. and let the sheriff distrain the jurors aforesaid by all the lands, &c. and that of the issues, &c. so that they be here, unless, &c. to make the jury aforesaid, &c. And now here on this day comes the said *Robert* by his attorney aforesaid: and the said justices of assise before whom, &c. have sent here their record in these words: afterwards, &c. (unto) come, and on that jury are sworn; and because the residue of the jurors of the same jury have not appeared, therefore one from the by-standers, by the sheriff of the county aforesaid, hereto elected at the request of the said *Robert Bluet*, and by the command of the justices aforesaid, is added anew, whose name to the panel within written is annexed, according to the form of the statute in such case made and provided; and the juror so added anew, to wit, *Abraham Saunders* being called likewise comes, who to say the truth of the within contained, together with the other jurors aforesaid hereto first impanelled and sworn, being elected, tried and sworn, say, &c.

Smith and Harmer.

*A respondens
ouster.*

Default.

Inquiry award-
ed.
Mod. Caf. 142.
Sa'k. 315.

ON which day before the lady the queen at *Westminster* come the parties aforesaid by their attornies aforesaid; whereupon the premisses being seen, and mature deliberation being thereon had, it seems to the court of the said lady the queen now here, that the plea aforesaid by the said *John* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law for the court of the said lady the now queen to quash the bill aforesaid of him the said *Robert* against him the said *John* exhibited; wherefore the court of the said lady the queen now here do order, that the said *John* do farther answer to the bill aforesaid of him the said *Robert* on *Friday* next after the purification of the blessed virgin *Mary*: the same day is given to the said *Robert* there, &c. On which day before the said lady the queen at *Westminster* comes the said *Robert* by his attorney aforesaid; and the said *John* doth not come, nor say any thing in bar or preclusion of the action aforesaid of him the said *Robert*, but makes default: wherefore it is considered, that the said *Robert* ought to recover his damages against the said *John* by reason of the non-performance of the several promises and assumptions aforesaid: but because the court of the said lady

dy the queen now here do not know what damages the said *Robert* hath by reason of the premisses in this behalf sustained, therefore the sheriff is commanded, that by the oath of 12 good and lawful men of his bailiwick he diligently inquire what damages the same *Robert* hath sustained, as well by reason of the non-performance of the several promises and assumptions aforesaid, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which, &c. return to the said lady the queen at *Westminster* on day next after under his seal and the seals of those by whose oath he shall take that inquisition, together with the writ of the said lady the queen to him therefore directed: the same day is given to the said *Robert* there, &c.

[493]

ON which day before the lord and lady the king and queen at *Westminster* come the parties aforesaid by their attornies aforesaid; and upon this the said *Robert Payne* relinquishing his averment by him the said *Robert* above pretended, says, that he cannot deny the action of him the said *Ralph* aforesaid, nor but that the writing aforesaid is his deed, nor but that he owes to the said *Ralph Widrington* the said 100 l. in manner and form as the said *Ralph* hath above against him declared; and doth expressly confess, that the declaration aforesaid is in all things true: therefore it is considered, that the said *Ralph* do recover against the said *Robert* his debt aforesaid, and also 53 s. for his damages which he hath sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in this behalf expended, to the same *Ralph* by the court of the said lord and lady the king and queen now here with his assent adjudged: and the said *Robert* in mercy, &c.

Confession of the action after issue.

WHICH being read and heard, the same *Thomas* says, that the said *Elizabeth* ought not to have or maintain her action aforesaid thereof against him, because he says, that he the said *Thomas* did pay to the said *Elizabeth* all and singular the sums of money on the said feasts in the same condition above limited, which he to her on the same several feasts ought to have paid, according to the form and effect of that condition, to wit, at *Steyning* aforesaid in the county aforesaid: and this he is ready to verify: wherefore he prays judgment if the said *Elizabeth* ought to have or maintain her action aforesaid thereof against him, &c.

Conditions performed.

And the said *Elizabeth* says, that she by any thing by the said *Thomas* above in pleading alledged ought not to be precluded from having her action aforesaid thereof against him, because by protesting, that the said *Thomas* hath not paid to the same *Elizabeth* any sum of money of the said several sums of money on any feast of those feasts in the condition aforesaid above specified, as the said *Thomas* above by pleading hath alledged, for plea the same *Elizabeth* says, that the said *Thomas* did not pay to

Repl'.

Breach.

her 40*s.* on the feast of the annunciation of the blessed virgin *Mary* in the year of the Lord 1711, which he on that feast ought to have paid, according to the form and effect of that condition: and this she is ready to verify: wherefore she prays judgment and her debt aforesaid, together with her damages by reason of the detention of that debt, to be adjudged to her, &c.

Rejoinder.]

And the said *Thomas* says, that he did pay to the said *Elizabeth* the said 40*s.* on the said feast of the annunciation of the blessed virgin *Mary*, which he the said *Thomas* on that feast ought to have paid, according to the form and effect of the condition aforesaid: and of this he puts himself on the country: and the said *Elizabeth* thereof likewise, &c. Therefore let a jury thereon come before the lady the queen at *Westminster* on *Wednesday* next after three weeks of the holy *Trinity*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Payment on the day.

WHEN, &c. and prays *oyer* of the writing aforesaid; and to him it is read, &c. He prays also *oyer* of the condition of the same writing; and to him it is read in these words: the condition of this obligation is such, that if the above bound *Thomas Gliffe*, *Francis Parker* and *William Lattimer*, or any of them, their or any of their executors or administrators, or any of them; do and shall well and truly pay, or cause to be paid, unto the above named *John Kendall*, his executors, administrators or assigns, the full and just sum of 6*l.* 9*s.* 6*d.* of good and lawful money of *England*, in manner and form following, (that is to say) the sum of 3*l.* 7*s.* parcel thereof, at or upon the 5th day of *Feb.* next ensuing the date hereof, and the sum of 3*l.* 2*s.* 6*d.* more residue thereof, upon the 24th day of *June* next also ensuing the date hereof, then this obligation to be void, and of none effect; but if default be made of payment of either of the said sums, on either of the said days whereon the same ought to be paid as aforesaid, then to be and remain in full force, strength and virtue: which being read and heard, the same *Francis* says, that the said *Mary* ought not to have or maintain her action against him, because he says, that he the same *Francis* and the said *William Lattimer* in the condition aforesaid mentioned, after the said 5th day of *February* in the same condition mentioned, and in the life-time of him the said *John Kendall*, and before the day of the issuing of the original writ of her the said *Mary*, to wit, on the 12th day of *April* in the fifth year of the reign of the lady *Anne* the now queen, at *Kettering* aforesaid, paid to the said *John Kendall* the said principal debt 6*l.* 9*s.* 6*d.* in the condition aforesaid likewise mentioned, and the whole interest then due: and this, &c. Wherefore, &c.

[494]

Repl'.

And the said *Mary* says, that she by any thing before alledged ought not to be precluded from having her action aforesaid, because she says, that the said *Francis* and the said *William Lat-*

timmer

timer did not pay to the same *John Kendall* in his life-time the said principal debt 6*l.* 9*s.* 6*d.* in the condition aforefaid mentioned, and the whole interest therefore due, in manner and form as the said *Francis* hath above in pleading alledged: and this she prays may be inquired of by the country: and the said *Francis* likewise, &c. Therefore the sheriff is commanded, that he cause to come here on the octave of the purification of the blessed *Mary* 12, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Lickfeild at the suit of Rapley.

WHEN, &c. and prays *oyer* of the writing obligatory aforefaid; and to her it is read, &c. She prays likewise *oyer* of the condition of the same writing obligatory; and to her it is read in these words, to wit, the condition of the above obligation is such, that whereas the above named *George Rapley*, at the special instance and request of the above bounden *Henry Lickfeild*, is to become bound or bail in his majesty's court of king's bench for the appearance the next term, or when the lord chief justice shall order, of *Elizabeth Lickfeild* and *Agnes Lickfeild*, who stand charged with the stealing away of one *Anne Stilwell* an heiress; if therefore the said *Henry Lickfeild*, his heirs, executors and administrators, shall from time to time, and at all times hereafter, save, defend, keep harmless and indemnify the said *George Rapley*, his executors and administrators, of and from all damages, charge, trouble and incumbrance, that may any way happen thereby, that then this obligation to be void, or else to remain in full force and virtue in law: which being read and heard, the same *Anne* says, that the said *Lucy* ought not to have or maintain her action aforefaid thereof against her, because she says, that the said *George* in his life-time, nor the said *Lucy* his executrix after the death of him the said *George* from the time of the making of the writing obligatory aforefaid hitherto were not damnified, nor was either of them damnified concerning or by reason of any matter, cause or thing in the condition of the writing obligatory aforefaid mentioned: and this the same *Anne* is ready to verify: wherefore she prays judgment if the said *Lucy* ought to have or maintain her action aforefaid thereof against her, &c.

Oyer of the bond to indemnify the plaintiff for being bail for the defendant.

Not damnified.

Easter 34 C. 2. Roll 248.

Surry, *JAMES* earl of *Brecknock* and duke of *Ormond* in to wit. the kingdom of *Ireland*, steward of the household of the now lord the king, and one of the nobles and peers of this kingdom of *England*, who as well for the lord the king as for himself prosecutes, complains of *William Hetherington* in the custody of the marshal, &c. for this, to wit, that whereas in a statute made in the parliament of the lord *Richard*, late king of

Scandalum magnatum.
4 Co. 12. b.

3 E. 1. c. 34.

[495]

England, the Second, after the conquest, held at *Gloucester* in the second year of his reign, among other things, it is ordained and straightly defended, that none be so hardy to devise, speak or to tell any false news, lies, or other such false things of prelates, dukes, earls, barons, and other nobles and great men of the realm, nor of the chancellor, treasurer, clerk of the privy seal, steward of the king's house, justices of the one bench or of the other, and of other great officers of the realm, whereof discord or any slander might rise within the same realm; and he that doth the same should have and incur the pain another time ordained thereof by the statute of *Westminster* the first, as in the same statute more fully is contained; nevertheless the said *William Hetherington*, not regarding the statute aforesaid, on the day of _____ in the thirty-third year of the reign of the lord *Charles* the Second, now king of *England*, &c. at *S.* in the county of *Surry* aforesaid, out of his premeditated malice and envy, in the presence and hearing of very many faithful subjects of the said lord the now king, with an intent to bring him the said earl of *B.* in danger of losing his life, he the said earl of *Brecnock* being then and yet, and for ten years and more now last past and continually hitherto, one of the nobles and great men of this kingdom of *England*, and steward of the king's house, the same *William* then and there falsely and maliciously said and asserted, that he the said earl of *Brecnock* was guilty of high treason; and the same *William* then and there falsely and maliciously instigated sundry persons falsely to accuse him the said earl of *Brecnock* of high treason: and whereas also afterwards, to wit, the same day and year aforesaid, at *S.* aforesaid in the county aforesaid, he the said *William* out of his farther premeditated malice and envy, and with an intent to defame him the said earl, and bring him into hatred, slander and disgrace, being then and yet, and for all the time aforesaid continually hitherto as aforesaid, one of the nobles and great men of this kingdom of *England*, and steward of the king's house, and to cause him to lose his office of steward of the king's house, in the presence and hearing of very many of the faithful subjects of the said lord the king then and there present, and hearing these false malicious news and horrible lies of the said earl of *B.* then and there said, asserted, spoke, pronounced, and with a loud voice published in these *English* words following, to wit, the duke of *Ormond* (meaning him the said James earl of *B.*) is a papist, and in the *Irish* plot, (meaning a certain wicked conspiracy against the said lord the now king in the kingdom of *Ireland*) when in truth the same earl of *B.* is not, nor ever was, a papist, nor guilty of any high treason or conspiracy against the said lord the now king, whereby great slander and discord to the same earl of *Brecnock* then there within the kingdom aforesaid are risen, and hereafter may arise, in contempt of the said lord the now king, and against the form of the statute aforesaid, to the damage

damage of the said *James* earl of *Brecknock* 10000 *l.* And therefore he produces the suit, &c.

Chinnell and Sparkes.

Hill. 4 A. Roll 22.

Middlesex, **W**ILLIAM *Chinnell* complains of *Charles Sparkes* in the custody of the marshal, &c. in a plea, that he render to him 23 *l.* 2 *d.* of lawful money of *England*, which he owes him and unjustly detains, for this, to wit, that whereas the said *William Chinnell*, otherwise, to wit, in *Easter* term in the fourth year of the reign of the lady *Anne*, now queen of *England*, &c. in the court of the said lady the queen before the queen herself, the same court then being at *Westminster* in the county of *Middlesex*, by the judgment of the said court did recover against the said *Charles*, by the names of *Charles Sparkes*, 23 *l.* 2 *d.* which to the same *William* in the same court of the said lady the queen before the queen herself at *Westminster* afore said in the county of *Middlesex* afore said were adjudged for his damages which he had sustained, as well by reason of a certain trespass by him the said *Charles* on him the said *William* then lately committed, as for his costs and charges by him the said *William* about his suit in that behalf expended, whereof the same *Charles* is convicted, as by the record thereof in the same court of the said lady the queen before the queen herself, at *Westminster* afore said in the county of *Middlesex* afore said remaining, more fully is manifest and appears; which said judgment yet remains in its full force and effect not satisfied or reversed; and the same *William* hath not yet sued out his execution on the judgment afore said in form afore said recovered, whereby an action hath accrued to the same *William* to demand and have of the said *Charles* the said 23 *l.* 2 *d.* Nevertheless the said *Charles*, altho' often required, &c. the said 23 *l.* 2 *d.* to the same *William* hath not yet paid, but hitherto to pay him the same hath altogether refused, and yet doth refuse; whereby the said *William* says that he is prejudiced, and hath damage to the value of 30 *l.* And therefore he produces the suit, &c.

Debt on a judgment after verdict.

AFTERWARDS, to wit, on day next after in *Hilary* term in the 7th year of the reign of the lord *George* now king of *Great Britain*, &c. before the king himself at *Westminster* comes here into court the said *Elizabeth* in her proper person, and by the form of the statute in such case lately made and provided, chooses to be deliver'd to her all the goods and chattels of the said *George B.* saving only his oxen and beasts of his plough, and likewise the one half of all and singular the lands and tenements of the said *George* in the county palatine of the lord the king of *Chester*, and in the county palatine of the lord the king of *Lancaster*, and also in the county of

[496]

The entry of an *elegit* and award thereof into a county palatine and several counties.
13 E. 1. 18.

Derby, to hold the goods and chattels aforesaid as her proper goods and chattels, and the one half of the lands and tenements aforesaid to her the said *Elizabeth* and her assigns as her freehold, according to the form of the statute aforesaid, by a reasonable price and extent, until she shall thereout fully levy the debt and damages aforesaid; and she prays the writs of the said lord the now king to the chamberlain of the county palatine of *Chester*, and to the chancellor of the county palatine of *Lancaster*, and to the sheriff of the county of *Derby*, in form aforesaid to be directed; and to her they are granted returnable before the said lord the king at *Westminster* on day next after then next ensuing: the same day is given to the said *Elizabeth* there, &c. On which day before the lord the king at *Westminster* comes the said *E.* in her proper person; and the said chamberlain of the county palatine of *Chester* aforesaid, and the chancellor of the county palatine of *Lancaster* aforesaid, and the said sheriff of the county of *Derby* have not returned the several writs aforesaid, nor have nor hath any of them done any thing therein; and thereupon the said *Elizabeth* as before prays several writs of the said lord the now king to the said chamberlain of the county palatine of *Chester*, and to the chancellor of the county palatine of *Lancaster*, and to the sheriff of the county of *Derby*, in form aforesaid to be directed; and to her they are granted returnable before the lord the king at *Westminster* on day next after on which day before the lord the king at *Westminster* comes the said *Elizabeth* in her proper person; and the said chancellor of the county palatine of *Lancaster*, and the said sheriff of the county of *Derby*, have not returned the several writs aforesaid, or either of them, nor have they, or either of them, done any thing therein; and the said chamberlain of the county palatine of *Chester* hath returned, that by virtue of the writ aforesaid to him directed, he had by another writ under the seal of the county palatine of *Chester* aforesaid given it in command to the sheriff of the county palatine of *Chester* aforesaid, as in that writ he is commanded; which said sheriff, to wit, *Thomas Brook*, bart. hath answer'd him, that the execution of the writ aforesaid appears in a certain inquisition to this writ annexed; the tenor of which said inquisition follows in these words, to wit, an inquisition indented, &c.

The entry of an
imparlance roll
in C. B.
Pract. Reg. 34.

London, *ELIAS Bates* late of *London* aforesaid, mariner, to wit. *E* was attached to answer to *Bartholomew Stibbs* in a plea of trespass on the case, &c. And whereon the same *Bartholomew* by *Robert Bicknell* his attorney complains, why whereas he the same *Bartholomew* on the 26th day of *November* in the year of the Lord 1716, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, was possessed of 4026 *l.* of tin foreign coined money, at *Jonkeey-loan* in the *East-Indies*, current money, to the value of 200 *l.* of the money of this kingdom, as of his own proper money; and, being so thereof possessed,

seised, the same *Bartholomew* afterwards, to wit, the same day and year there that foreign money out of his hands and possession casually lost; which said foreign money afterwards, to wit, the same day and year, at *London* afore said in the parish and ward afore said, to the hands and possession of the said *Elias* by finding came: nevertheless the said *Elias* knowing the foreign money afore said to be the proper money of him the said *Bartholomew*, and to him of right to belong and appertain; but contriving and fraudulently intending him the said *Bartholomew* in this behalf craftily and subtilly to deceive and defraud, the foreign money afore said, altho' required, to the same *Bartholomew* hath not yet delivered, but that foreign money the same *Elias* afterwards, to wit, on the 29th day of *November* in the year above said, at *London* afore said in the parish and ward afore said, to his own proper use converted and disposed, to the damage of the said *Bartholomew* 200*l.* And therefore he produces the suit, &c.

And the said *Elias* by *A. B.* his attorney comes and defends the force and injury when, &c. and prays leave to imparl there-to here until from the day of *Easter* in 15 days; and hath, &c. The same day is given to the said *Bartholomew* here, &c.

Impar lance.

BEFORE which day the lord king *James* the Second abdicated himself from the government of his kingdom of *England*; on which day the plaint, plea and proceedings afore said remained without day, because the court afore said was not held nor open, and afterwards, by virtue of a certain act of parliament made at *Westminster* in the county of *Middlesex* on the 13th day of *February* in the first year of the reign of the lord and lady *William* and *Mary*, now king and queen of *England*, were revived, continued and adjourned, until in 15 days of *Easter* then next ensuing: the same day was given by the statute afore said, as well to the said *John* as to the said *Thomas* in the court afore said: on which day here comes as well the said *John* as the said *Thomas* by their attornies afore said: and because the justices here will advise themselves of and upon the premisses before they give judgment thereon, day is farther given to the parties afore said here until

next after to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here comes as well the said *John* as the said *Thomas* by their attornies afore said; and hereupon the premisses being seen, and by the justices here fully understood, it seems to the same justices, that the plea of the said *Thomas* in bar pleaded, as to the said first and third promises and assumptions in the declaration afore said contained, and the matter in the same plea contained, are not sufficient in law to preclude the said *John* from having thereof his action afore said, as the said *John* hath above thereof alledged: and that the said declaration of the said *John*, as to the said second and fourth promises and assumptions, and the matter in the same declaration thereof contained, are sufficient in law to maintain

[497]

Abdication of
K. *James*.
Proceedings re-
vived by
1 W. & M.
c. 4.
Pract. Reg. 36.

The plea insuf-
ficient as to
1st and 3d pro-
misses.

The declaration
as to 2d and 4th
sufficient.

An inquiry
awarded.

The return.
Pract. Reg. 34.

Judgment.

maintain the said *John* to have thereof his action aforesaid against the said *Thomas*, as the said *John* hath above thereof alleged; wherefore the same *John* ought to recover his damages by reason of the non-performance of the several promises and assumptions last mentioned against the said *Thomas*: but because it is unknown what damages the said *John* hath sustained on that occasion, the sheriff is commanded, that by the oath of good and lawful men of the county aforesaid he diligently inquire what damages the said *John* hath sustained, as well by reason of the premises, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which, &c. certify here on the octave of *St. Hilary*, under the seal, &c. and the seals, &c. On which day comes the said *John* by his attorney aforesaid; and the sheriff, to wit, *C. L. knt.* and *J. H. knt.* now returns here a certain inquisition taken before him at the *Ball in Old Southampton Buildings* in the county aforesaid, on the 26th day of *November* in the first year of the reign of the lord and lady the now king and queen, by the oath of 12, &c. whereby it is found, that the said *John* hath sustained damages by reason of the premises, besides his costs and charges by him about his suit in this behalf expended, to 14*l.* and for those costs and charges to 20*s.* And because the justices here will advise themselves of and upon the premises before they give judgment thereon, day is given to the said *John* here until from the day of *Easter* in 15 days to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here comes the said *John* by his attorney aforesaid: and because the justices here will farther advise themselves of and upon the premises before they give judgment thereon, day is farther given to the said *John* here until on the morrow of the holy *Trinity* to hear their judgment thereon, because the same justices here thereof not yet, &c. On which day here comes the said *John* by his attorney aforesaid; and hereupon the premises being seen, and by the justices here more fully understood, it is considered, that the said *John* do recover against the said *Thomas* his damages aforesaid to 15*l.* by the inquisition aforesaid in form aforesaid found, and also 8*l.* to the same *John* at his request, for his costs and charges aforesaid, by the court here of increase adjudged; which said damages in the whole amount to 23*l.* And the said *Thomas* in mercy, &c.

[498]

Tebbutt at the suit of *Powle, widow.*

Appearance at
the day pleaded
in K. B.

WHEN, &c. and prays *oyer* of the writing obligatory aforesaid; and to him it is read, &c. He prays likewise *oyer* of the condition of the same writing; and to him it is read in these words, to wit, the condition of this obligation is such, &c. Which being read and heard, the same *Robert Tebbutt* the younger says, that they the said *Emery* and *John* ought not to have or maintain their action aforesaid thereof against him,

him, because he says, that after the making of the writing obligatory aforesaid, and before the day of the exhibition of the bill aforesaid of them the said *Emery* and *John*, to wit, on *Monday* next after three weeks of *St. Michael* next ensuing the date of the writing obligatory aforesaid in the condition aforesaid above mentioned, he the said *Robert Tebbutt* the younger, in the condition aforesaid above named, appeared before the said lord the king at *Westminster* aforesaid, to answer to the said *Emery* and *John* in the plea of trespass aforesaid, and also to the bill of them the said *Emery* and *John* against the said *Robert Tebbutt* the younger for 800 *l.* upon promise, according to the form and effect of the condition aforesaid: and this he is ready to verify by the record of that appearance in the court of the said lord the king before the king himself remaining: wherefore he prays judgment if the said *Emery* and *John* ought to have their action aforesaid thereof against him, &c.

And the said *Emery* and *John* say, that they by any thing by the said *Robert Tebbutt* the younger above in pleading alledged ought not to be precluded from having their action aforesaid thereof against him, because they say, that there is not any such record of the appearance of the said *Robert Tebbutt* the younger before the said lord the king in the said court of the said lord the king before the king himself at *Westminster* aforesaid on *Monday* next after three weeks of *St. Michael*, according to the form and effect of the condition aforesaid, as the same *Robert Tebbutt* the younger hath above in pleading alledged: and this they are ready to verify: wherefore they pray judgment and their debt aforesaid, together with their damages by reason of the detention of that debt, to be adjudged to them, &c.

Repl^r that there is no such record.

And the said *Robert Tebbutt* the younger says, that there is such record of the said appearance of the said *Robert Tebbutt* the younger in the said court of the said lord the king before the king himself at *Westminster* aforesaid on *Monday* next after three weeks of *St. Michael* next ensuing the date of the writing obligatory aforesaid in the said court of the said lord the king before the king himself at *Westminster* aforesaid remaining, as the said *Robert Tebbutt* the younger hath above in pleading alledged: and this he is ready to verify by that record, &c. Therefore the said *Robert Tebbutt* the younger is commanded, that he have here on *Tuesday* next after that record at his peril, &c. The same day is given to the said *Emery* and *John* there, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attornies aforesaid; and the said *Robert* the record of his appearance aforesaid by him above in form aforesaid alledged here in court hath not, but hath therein failed; therefore it is considered, that the said *Emery* and *John* do recover against the said *Robert* their debt aforesaid, and also 63 *s.* for their damages which they have sustained, as well by reason of the detention of that debt, as for their costs and charges by them about their suit in this behalf expended, to the same *Emery* and

Rej. that there is.

Failure of the record.

Judgment for the plaintiff.

and *John* by the court of the said lord the king now here with their assent adjudged: and the said *Robert* in mercy, &c.

Coulthurst at the suit of Wooton.

Plea, concord
5000 l. weight
of copper.
6 Rep. 44.
Præc. Reg. 13.
15.

[499]

Repl', that he
did not receive.

Judgment on
demurrier.

WHEN, &c. and says, that he the said *Henry* ought not to have or maintain his action aforesaid thereof against him, because he says, that right and true it is that he did assume upon himself in manner and form aforesaid as the said *Henry* against him by his declaration aforesaid hath above supposed; but the same *Thomas* farther says, that after the making of the several promises and assumptions aforesaid above supposed to be made, to wit, on the third day of *January* in the year of the Lord 1714 aforesaid, he the same *Thomas*, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, did give and deliver to the said *Henry* 5000 lb. weight of copper, in full satisfaction and discharge of the several promises and assumptions aforesaid, and of the whole money therein mentioned; which said 5000 lb. weight of copper the said *Henry* then and there in full satisfaction and discharge of the several promises and assumptions aforesaid, and of the whole money therein mentioned, of the same *Thomas* had and received: and this he is ready to verify: wherefore he prays judgment if the said *Henry* ought to have or maintain his action aforesaid thereof against him, &c.

And the said *H.* says, that he by any thing by the said *T.* above in pleading alledged ought not to be precluded from having his action aforesaid thereof against him, because by protesting, that the said *T.* did not give or deliver to the same *H.* the said 5000 lb. weight of copper in full satisfaction and discharge of the several promises and assumptions aforesaid, and of the whole money therein mentioned, for plea the same *H.* says, that he had not, nor did receive of the said *T.* the said 5000 lb. weight of copper, in full satisfaction and discharge of the several promises and assumptions aforesaid, and of the whole money therein mentioned, in manner and form as the same *T.* hath above in pleading alledged: and this he prays may be inquired of by the country: (to this the defendant demurred generally, and the plaintiff joined in demurrer): whereupon all and singular the premisses being seen, and by the court of the said lord the king now here more fully understood and examined, and mature deliberation thereon had, because it seems to the court of the said lord the king now here, that the plea aforesaid by him the said *H.* in manner and form aforesaid above in replying pleaded, and the matter in the same contained, are good and sufficient in law to maintain him the said *H.* to have his action aforesaid thereof against him the said *T.* whereby the same *H.* remains therein against the said *T.* undefended, &c. wherefore the same *H.* ought to recover his damages by reason of the premisses against the said *T.* But because it is not known to the court of the said lord the king now here what damages the same *H.* hath

H. hath sustained by reason of the premisses; therefore the sheriffs of *London* are commanded, that by the oath of 12 good and lawful men of their bailiwick they diligently inquire what damages the said *H.* hath sustained, as well by reason of the premisses aforesaid, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which they shall thereof take return to the lord the king at *Westminster* on *Tuesday* next after three weeks of the holy *Trinity*, under their seals and the seals of those by whose oath they shall take that inquisition, together with the writ of the lord the king to them therefore directed: the same day is given to the said *H.* there, &c. On which day before the lord the king at *Westminster* comes the said *H.* by his attorney aforesaid; and the sheriffs of *London*, to wit, *R. K. knt.* and *R. B. knt.* by virtue of the writ of the said lord the king to them directed, have returned a certain inquisition taken before them at the *Guildhall* of the city of *London*, situate in the parish of *St. Lawrence* in the *Old Jewry* in the ward of *Cheape* of the same city, on the fifth day of *July* in the first year of the reign of the said lord the now king; whereby it is found that the said *H.* hath sustained damages by reason of the premisses aforesaid, besides his costs and charges by him about his suit in this behalf expended, to 147 *l.* 6 *s.* 6 *d.* and for those costs and charges to 27 *s.* 4 *d.* Therefore it is considered, that the said *H.* do recover against the said *T.* his damages aforesaid by the jury aforesaid in form aforesaid assessed, and also 11 *l.* 6 *s.* 2 *d.* for his costs and charges aforesaid, to the same *H.* by the court of the said lord the king now here with his assent of increase adjudged; which said damages in the whole amount to 160 *l.* And the said *T.* in mercy, &c.

Inquiry awarded.

The return,

Sign'd 30 July
1716.

Afterwards, to wit, on *Friday* the 28th day of *October* in the first year of the reign of the lord *George*, now king of *Great Britain*, &c. the transcript of the record and proceedings between the parties aforesaid in the plea aforesaid, with all things touching them, by pretence of a certain writ of the said lord the king to correct error by the said *T.* on the premisses, prosecuted before the justices of the said lord the king of the common bench, and the barons of the exchequer of the said lord the king of the degree of the coif into the exchequer chamber aforesaid, according to the form of the statute made in the parliament of the lady *Elizabeth*, late queen of *England*, &c. held at *Westminster* on the 23d day of *Nov.* in the 27th year of her reign, from the said court of the said lord the king here before the king himself were transmitted: and the said *T.* in the same court of exchequer chamber appearing, certain matters for error in the record and proceedings aforesaid for the reversal and annulling of the judgment aforesaid assigned, to which the said *H.* in the same court of exchequer chamber aforesaid likewise appearing pleaded, that there was no error either in the record and proceedings, or in the rendition of the judgment aforesaid: and afterwards, to wit, on *Tuesday* the

Error in the exchequer chamber.

27 El. c. 8.

Judgment affirmed.

Costs.

3 H. 7. c. 10.
19 H. 7. c. 20.
13 C. 2. c. 2.

[500]

The record re-
mitted into K.
B.

the 19th day of *June* in the 2d year of the reign of the lord *George*, now king of *Great Britain*, &c. as well the record and proceedings aforesaid, and the judgment on the same given, as the said causes for error by the said *T.* assigned and alledged, being seen, and by the court of exchequer chamber aforesaid diligently examined, and more fully understood, it seemed to the said court of exchequer chamber aforesaid; that that record was in nothing vitious or defective, and that that record was in nothing erroneous: therefore it was then and there by the same court of exchequer chamber aforesaid considered, that the judgment aforesaid should be in all things affirmed, and should stand in its full force and effect, the said causes and matters above for error by the said *T.* assigned and alledged in any wise notwithstanding: and it was then and there farther considered by the same court, that the said *H.* should recover against the said *T.* 11 *l.* to the same *H.* with his assent by the court there, according to the form of the statute thereof made and provided, adjudged for his damages, costs and charges, which he had by reason of the delay of the execution of the judgment aforesaid, by the presence of the prosecution of the said writ of error; and thereupon the record aforesaid, and also the proceedings of the said justices of the common bench aforesaid, and of the barons aforesaid of the exchequer aforesaid, before them in the premises had, before the lord the king wheresoever, &c. by the same justices and the barons aforesaid were then remitted, according to the form, &c. and in the court of the said lord the king here before the king himself now remain, &c.

The Lord Pelham against Fagg, Baronet.

Impar lance.
The plaintiff
made a peer
after the bill
filed and before
issue joined.
2 E. 6. c. 7.
Tho. Ent. 34.

AND now on this day, to wit, *Thursday* next after the octave of *St. Hilary* in this same term, until which day the said *Robert Fagg*, bart. had leave to imparl to the bill aforesaid, and then to answer, &c. (before which day, to wit, on the 10th day of *January* in the fifth year of the reign of the said lady the queen, the same queen by her letters patent sealed under her great seal of *England*, bearing date at *Westminster* the said 10th day of *January* in the fifth year of her reign aforesaid, and here in court produced, did raise, constitute and create the said *Thomas Pelham*, then bart. to the estate, degree, stile, title, name and honour of a baron within this kingdom of *England*, by the name of *Thomas lord Pelham*, baron of *Laughton* in the county of *Sussex*) before the lady the queen at *Westminster* comes as well the said *Thomas lord Pelham* by his attorney aforesaid, as the said *Robert Fagg*, bart. by *John Tilden* his attorney; and the same *Robert Fagg*, bart. defends the force and injury when, &c. and says, that he is not guilty of the premises above charged upon him: and of this he puts himself on the country: and the said *Thomas lord Pelham* thereof likewise, &c. Therefore let a jury thereon come

come before the lady the queen at *Westminster* on day next
after and who neither, &c. to recognize, &c. because as
well, &c. The same day is given to the parties aforesaid here,
&c.

England, **T**HE lady the queen sent to the sheriff of *Suffex* The entry of a fieri facias on the roll.
to wit. her writ close in these words, to wit, *Anne* by the
grace of God, of *Great Britain, France and Ireland*, queen, de-
fender of the faith, &c. To the sheriff of *Suffex*, greeting: we
command you, that of the goods and chattels of *Thomas Knapp*,
otherwise called *Thomas Knapp* of *Ringmer* in the county of *Suf-*
sex, yeoman, in your bailiwick, you cause to be made (*and so on*
till you come to) and have there then this writ. Witness *J. Holt*
knt. at *Westminster* 23d day of *October* in the 6th year of our
reign. *Holt. Coleman.* On which day before the said lady the
queen at *Westminster* comes the said *William* in his proper per-
son; and the sheriff of the county of *Suffex* aforesaid, to wit,
John Miller, bart. returns, that the said *Thomas* hath no goods
or chattels in his bailiwick whereof he could cause to be made
the debt and damages aforesaid, or any parcel thereof.

London, **T**HE lady the queen sent to the sheriff of *Suffex* her The like of a co. fa.
to wit. writ close in these words, to wit, *Anne* by the
grace of God, of *Great Britain, France and Ireland* queen, de-
fender of the faith, &c. To the sheriff of *Suffex*, greeting: we
command you, that you take *Thomas Knapp*, otherwise *Thomas*
Knapp of (*and so on to*) and have there then this writ. Witness
J. Holt, knt. at *Westminster* 28th day of *November* in the 6th year
of our reign. *Holt. Coleman.* On which day before the said
lady the queen at *Westminster* comes the said *William* in his pro-
per person; and the sheriff of the county of *Suffex* aforesaid, to
wit, *John Miller*, bart. returns, that the said *Thomas* is not
found in his bailiwick.

RICHARD B. complains of *Algernon* the same [501]
Algernon having the privilege of parliament, for this, to wit, The manner of suing a member of parliament in K. B. by summons, pursuant to 12 & 13 W. 3. c. 3.
that whereas the said *Richard* on the first day of *April* in the 7th
year of the reign of the lord the now king at *Westminster* ac-
counted with the said *Algernon* concerning several sums of money
to the same *Richard* from the said *Algernon* before that time due,
in arrear and unpaid, and upon that account the said *Algernon*
was found in arrears to the same *Richard* in 73*l.* 15*s.* 11½*d.* of
lawful money of this kingdom; and being so found in arrears,
the said *Algernon* afterwards, to wit, the same first day of *April*
in the 7th year aforesaid, at *Westminster* aforesaid, in considera-
tion thereof assumed on himself, and to the same *Richard* then
and there faithfully promised, that he the said *Algernon* the said
73*l.* 15*s.* 11½*d.* to the said *Richard*, when he should be thereto
after required, would well and truly pay and satisfy: and where-
as

as also the said *Algernon* afterwards, to wit, on the 20th day of *April* in the 7th year of the reign of the said lord the king at *Westminster* afore said was indebted to the said *Richard* in 1200*l.* of like lawful money of this kingdom, for so much money by the said *Algernon* to the use of the said *Richard* before then had and received ; and being so therein indebted, the said *Algernon* afterwards, to wit, the same day and year, at *Westminster* afore said, in consideration thereof assumed upon himself, and to the said *Richard* then and there faithfully promised, that he the said *Algernon* the said 1200*l.* to the same *Richard*, when he should be thereto after required, would well and truly pay and satisfy : and whereas also the said *Algernon* afterwards, to wit, on the said 20th day of *April* in the 7th year above said, at *Westminster* afore said, was indebted to the said *Richard* in other 1200*l.* of like money of this kingdom, for the like sum of money by the said *Richard* to the said *Algernon*, at the special instance and request of the said *Algernon* before then accommodated and lent ; and being so therein indebted the said *Algernon* afterwards, to wit, the same day and year, at *Westminster* afore said, in consideration thereof assumed upon himself, and to the same *Richard* then and there faithfully promised, that he the said *Algernon* the same 1200*l.* to the said *Richard*, when he should be thereto after required, would well and truly pay and satisfy : and whereas also the said *Algernon* afterwards, to wit, on the said 20th day of *April* in the 7th year above said, at *Westminster* afore said, was indebted to the said *Richard* in 1050*l.* of like money of this kingdom, for the like sum of money by the said *Richard* to the same *Algernon* and into the hands of the said *Algernon*, at the like special instance and request of him the said *Algernon* before that time to the use of him the said *Richard* deposited and paid ; and being so therein indebted the said *Algernon* afterwards, to wit, the same day and year, at *Westminster* afore said, in consideration thereof assumed on himself, and to the same *Richard* then and there faithfully promised, that he the said *Algernon* the same 1050*l.* to the said *Richard*, when he should be thereto after required, would well and truly pay and satisfy : and whereas also the said *Algernon* afterwards, to wit, on the said 20th day of *April* in the 7th year above said, at *Westminster* afore said, was indebted to the said *Richard* in other 1050*l.* of like lawful money of this kingdom, as well for divers other sums of money by the said *Richard* for the same *Algernon*, and at his special instance and request before then laid out, expended and paid, as for fundry goods, wares and merchandizes by the said *Richard* to the said *Algernon*, to the use of him the said *Algernon*, and by the order of him the said *Algernon* before then sold and delivered ; and being so therein indebted, the said *Algernon* afterwards, to wit, the same day and year, at *Westminster* afore said, in consideration thereof assumed upon himself, and to the same *Richard* then and there faithfully promised, that he the said *Algernon* the same

same 1050*l.* last mentioned to the said *Richard*, when he should be thereto after required, would well and faithfully pay and satisfy: and whereas also the said *Algernon* afterwards, to wit, on the said 20th day of *April* in the 7th year abovesaid, at *Westminster* aforesaid, was indebted to the said *Richard* in other 1200*l.* of like lawful money of this kingdom, for the like sum of money by the said *Algernon* to the use of him the said *Richard* had and received; and being so therein indebted, the said *Algernon* afterwards, to wit, on the same 20th day of *April* in the 7th year abovesaid, at *Westminster* aforesaid, in consideration thereof assumed upon himself, and to the same *Richard* then and there, faithfully promised, that he the said *Algernon* the said 1200*l.* last mentioned to the same *Richard*, when he should be thereto after required, would well and faithfully pay and satisfy: nevertheless the said *Algernon* his several promises and assumptions aforesaid in form aforesaid made not regarding, but contriving and fraudulently intending the same *Richard* in this behalf craftily and subtilly to deceive and defraud, the said several sums, or any penny thereof, to the same *Richard* (altho' thereto by him the said *Richard* afterwards, to wit, on the said 20th day of *April* in the 7th year abovesaid, and often after, at *Westminster* aforesaid, he was required) hath not paid, nor any wise for the same satisfied, but to pay him them, or for the same any wise to satisfy, hath altogether refused, and yet doth refuse, to the damage of the said *Richard* 2000*l.* And therefore he produces the suit, &c. And hereupon the same *Richard* prays the process of the lord the king, according to the form of the statute in such case made and provided, to him thereon to be made; and to him thereon it is granted, &c.

[502]

Pledges to prosecute { *John Doe,*
and
Richard Roe.

The writ of summons:

GEORGE, &c. To the sheriff of *Berks*, greeting: we command you, that you cause to be summoned *John B. bart.* (having the privilege of parliament) that he be before us at *Westminster* on day next after to answer to *William C.* in a plea of trespass on the case, as he shall be able reasonably to shew that he ought to answer therein; and have there that writ. Witness *John Pratt*, knt. at *Westminster* day of in the 7th year of our reign.

Ventris.

Judgments.

Imparlanee.

Nil dicit in debts.

Judgment against an executor.

AND now on this day, to wit, *Monday* next after the octave of *St. Hilary* in this same term, until which day the said *Elizabeth* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lady the queen at *Westminster* come the said *John Ward* and *Anne* his wife by their attorney aforesaid, and pray that the said *Elizabeth* may answer to their declaration aforesaid: and the said *Elizabeth*, altho' on the same day solemnly called, doth not come, nor say any thing in bar or preclusion of the action aforesaid of them the said *John Ward* and *Anne* his wife, but hath made default; whereby the same *John Ward* and *Anne* his wife remain against the said *Elizabeth* therein undefended: therefore it is considered, that the said *John Ward* and *Anne* his wife do recover against the said *Elizabeth* their debt aforesaid, and also 36*s.* for their damages which they have sustained as well by reason of the detention of that debt, as for their costs and charges by them about their suit in this behalf expended, to the same *John Ward* and *Anne* his wife, by the court of the said lady the queen now here with their assent adjudged, of the goods and chattels which belonged to the said *Samuel Palmer* at the time of his death in the hands of the said *Elizabeth* to be administered, if she hath so much in her hands to be administered; and if she hath not so much in her hands to be administered, then the damages aforesaid of the proper goods and chattels of her the said *Elizabeth* to be levied: and the said *Elizabeth* in mercy, &c.

Judgment for the plaintiff in ejectment after a verdict.

Therefore it is considered, that the said *Charles* do recover against the said *William* his term aforesaid yet to come of and in the tenements aforesaid with the appurtenances, and the damages aforesaid by the jurors aforesaid in form aforesaid assessed, and also 8*l.* 10*s.* for his costs and charges aforesaid to the same *Charles* by the court of the said lord the king now here with his assent of increase adjudged; which said damages in the whole amount to 10*l.* 10*s.* 6*d.*

Betham and Shorte.

Judgment in trespass where the jury on the inquiry give more than the plaintiff declared for.

AND seals, &c. On which day here comes the said *William Betham* by his attorney aforesaid; and the sheriff, to wit, *F. B.* esq; now returns here a certain inquisition before him at *Horn-Castle* in the county aforesaid on the 6th day of *October* last past, by the oath of 12, &c. taken; whereby it is found, that the said *William Betham* hath sustained damages by reason

reason of the trespass, assault and imprisonment aforesaid, besides his costs and charges by him about his suit in this behalf expended, to 120*l.* and for those costs and charges to 2*d.* whereupon the said *William Betham*, because he by his declaration aforesaid complained he was prejudiced, and had damage to the value of 100*l.* only, freely here in court remits to the said *Peter* and *Samuel* 20*l.* of the said 120*l.* 2*d.* of the damages, by the inquisition aforesaid in form aforesaid found; and prays judgment of the residue of his damages, together with the said 2*d.* for his costs and charges by him about his suit in this behalf expended, by the inquisition aforesaid in form aforesaid likewise found, and the increase of the same, to be adjudged to him, &c. Therefore the said 20*l.* of the damages aforesaid being remitted, it is considered, that the said *William Betham* do recover against the said *Peter* and *Samuel* 100*l.* the residue of the said 120*l.* for the damages aforesaid, by the inquisition aforesaid in form aforesaid above found, and the said 2*d.* for the costs and charges aforesaid, by the same inquisition in form aforesaid likewise found, and also 14*l.* 6*s.* 6*d.* to the same *William Betham*, at his request, for his costs and charges aforesaid, by the court here of increase adjudged; which said damages in the whole amount to 114*l.* 6*s.* 8*d.* &c. and be the said *Peter* and *Samuel* of the said 20*l.* quit, &c. And upon this the said *William Betham* confesses here in court, that he will not farther prosecute against the said *William Gilby* in the plea aforesaid, but farther to prosecute against the said *William Gilby* in and upon the said plea doth wholly disavow and refuse: and let the said *William Betham* have execution against the said *Peter* and *Samuel* for the damages aforesaid, &c.

[504]

Jones and Tully.

Therefore it is considered, that the said *John Jones* do recover against the said *Arthur* his several terms aforesaid yet to come of and in the several tenements aforesaid with the appurtenances, and his damages aforesaid, to 40*s.* 2*d.* by the jurors aforesaid in form aforesaid assessed, and also 20*l.* 6*s.* 10*d.* to the same *John*, at his request, for his costs and charges aforesaid, by the court here of increase adjudged; which said damages in the whole amount to 22*l.* 7*s.* &c. And upon this the said *John Jones* prays the writ of the lord the king to the sheriff of the county aforesaid to be directed, to cause him to have possession of his terms aforesaid yet to come of and in the several tenements aforesaid with the appurtenances; and to him it is granted, returnable here from the day of *St. Martin* in 15 days, &c.

Judgment for the plaintiff in ejectment on a double demise. Salk. 777.

Wanley and others and Lord, widow.

Judgment against an executor in case.
Co. Ent. 2.
Ra. Ent. 65.

Therefore it is considered, that the said *George* and *George* do recover against the said *Rachel*, *Thomas*, *Joseph* and *Mary*, their damages aforesaid, by the inquisition aforesaid in form aforesaid found, and also 8*l.* for their costs and charges aforesaid to the same *George* and *George* by the court of the said lord the king now here with their assent of increase adjudged; which said damages in the whole amount to 520*l.* of the goods and chattels which belonged to the said *Robert* at the time of his death, being in the hands of the said *Rachel*, *Thomas*, *Joseph* and *Mary* to be administered, to be levied, if they have so much thereof in their hands to be administered; and if they have not so much in their hands, then the said 10*l.* for the costs and charges aforesaid of the proper goods and chattels of them the said *Rachel*, *Thomas*, *Joseph* and *Mary*, to be levied: and the said *Rachel*, *Thomas*, *Joseph* and *Mary* in mercy, &c.

Rebow, knt. and his wife against Plomer.

Judgment in debt against the heir of an heir of a devisee.

Therefore it is considered, that they the said *Isaac* and *Elizabeth* do recover against the said *George* the debt aforesaid, and the damages aforesaid, to 20*s.* 2*d.* by the jury aforesaid in form aforesaid assessed, and also 16*l.* to the same *Isaac* and *Elizabeth* with their assent, for their costs and charges aforesaid by the court here, with the assent and at the request of the said *Isaac* and *Elizabeth*, of increase adjudged; which said damages in the whole amount to 17*l.* 2*d.* of the lands and tenements of the said *George Plomer* which he had on the day of the exhibition of the bill aforesaid by hereditary descent in fee-simple from the said *Sarah Plomer*, which the same *Sarah* had by hereditary descent from the said *William Wilkinson* in fee-simple to be levied: and the said *George* in mercy, &c. But because it is not known what lands and tenements the said *George Plomer* on the day of the exhibition of the bill aforesaid, to wit, on the said

in the year

had by hereditary descent

in fee-simple from the said *Sarah*, which the same *Sarah* had by hereditary descent from the same *William Wilkinson* in fee-simple, the sheriff is commanded, that by the oath of good and lawful men of his bailiwick he diligently inquire what lands and tenements the said *George Plomer* on the said day of the exhibition of the bill aforesaid had by hereditary descent from the said *Sarah Plomer* in fee-simple, which the same *Sarah* had by hereditary descent from the said *William Wilkinson* in fee-simple, and how much those lands and tenements are worth by the year, according to the true value of the same, in all issues, besides reprises, and the lands and tenements with the appurtenances by that inquisition found, let the sheriff deliver to the said *Isaac* and *Elizabeth*, to hold to them and their assigns until they shall thereout levy

levy the debt and damages aforesaid; and how, &c. let the sheriff certify to the lord the king at *Westminster* on under the seal, &c. and the seals, &c.

Eldridge and Burfield.

Suffex, **T**HOMAS *Eldridge* was summoned to answer to to wit. *Robert Burfield* in a plea, why he took 7 cows of him the said *Robert* and them unjustly detained, against surety and pledges, &c. And whereon the same *Thomas* in his proper person hath offered himself the fourth day against the said *Robert* in the plea aforesaid; and the same *Robert*, altho' solemnly called, doth not come, but hath made default: therefore it is considered, that the said *Thomas Eldridge* do go thereof without day, &c. and that the said *Robert* and his pledges to prosecute, to wit, *John Doe* and *Richard Roe* be in mercy, &c. 2. the names of the pledges, &c. and that the said *Thomas* have a return of the cows aforesaid, &c. Afterwards, to wit, on day next after in this same term before the lady the queen at *Westminster* comes here into court the said *Robert Burfield* by *A. B.* his attorney, and by the statute, &c. prays the writ of the lady the queen of second deliverance of the cattle aforesaid; and to him it is granted, returnable here from the day of wheresoever, &c.

Nonfuit in replevin for not declaring.

13 E. 1. c. 2.

Lambert and another and Barnard.

AND the said *William* and *William*, for that the said *Elizabeth* by her plea aforesaid doth not deny but that the writing obligatory aforesaid is the deed of the said *John Barnard*, nor but that the debt aforesaid in the said writing contained is a just and true debt yet unpaid and not satisfied or discharged, and hath said nothing in bar or preclusion of the action of the said *William* and *William*, but the matter aforesaid by her the said *Elizabeth* above pleaded, that she hath no goods or chattels which belonged to the said *John* at the time of his death in her hands to be administred: and because the said *William* and *William* are not as yet advised but that the plea of the said *Elizabeth* may be true, they pray judgment of their debt aforesaid above demanded of the goods and chattels which belonged to the said *John* at the time of his death, which shall hereafter come to the hands of the said *Elizabeth* to be administred, to be levied: therefore it is considered, that the said *William* and *William* do recover against the said *Elizabeth* their debt aforesaid of the goods and chattels which belonged to the said *John* at the time of his death, which shall hereafter come to the hands of the said *Elizabeth* to be administred, to be levied; and the said *Elizabeth* in mercy, &c.

Judgment of asslets in futuro where the executor pleads *plene administrevit* to a bond.

The inrolment
of a deed ac-
knowledgeed in
the country be-
fore a puisne
judge.

England, **B**E it remember'd, that on *Monday* next after three weeks of *St. Michael* in this same term before the lord the king at *Westminster* *William Dolben*, knt. one of the justices of the lord the king, assigned to hold pleas in the court of the said lord the king before the king himself, reports that on the fifth day of *August* last past, at *Shrewsbury* in the county of *Salop*, came *William Scott* the elder in his proper person, and produced before the same justice a certain indenture which he acknowledged to be his deed, and prayed that that indenture as his deed, might be inrolled on record in the court of the said lord the king before the king himself at *Westminster*; which said indenture the said justice hath with his own proper hands now delivered here into court in form aforesaid to be inrolled, and it is inrolled in the form following to wit, This indenture, &c.

[506]
Judgment in
ejectment by not
informed with a
release of da-
mages.

AND the said *Matthew Dymock* by *John Lilly* his attorney comes and defends the force and injury when, &c. And hereupon the same *James Hicks* prays that the said *Matthew* may answer to his declaration aforesaid; and upon this the said attorney of the said *Matthew* says, that he is not informed by the said *Matthew* his master to give any answer for his same master to the said *James* in the plea aforesaid, and says nothing else in bar or preclusion of the action of the said *J.* aforesaid; whereby the said *J.* remains against the said *M.* therein undefended: therefore it is considered, that the said *J.* do recover against the said *M.* his term aforesaid yet to come of and in the tenements aforesaid with the appurtenances, and his damages which he hath sustained by reason of the trespass and ejectment aforesaid, to be adjudged, &c. And the said *J.* freely here in court acquits and releases the said *M.* from all such damages to be adjudged to him, therefore be the said *M.* from those damages quit; and the said *J.* prays the writ of the said lord the king to be directed to the sheriff of the county aforesaid, to cause him to have possession of his term aforesaid yet to come of and in the tenements aforesaid with the appurtenances; and to him it is granted, returnable before the said lord the king at *Westminster* on day next after The same day is given to the said *J.* there, &c.

A writ awarded
to the next
English county
where the issue
arose in *Wales*.

AND this he prays may be inquired of by the country: and the said *M.* thereof likewise, &c. and because several issues aforesaid between the parties aforesaid of and upon the premisses aforesaid joined to be tried by the country, arising and happening within the county of *Carmarthen* and the county of the borough of *Carmarthen* in the parts of *Wales*, ought to be tried by the men of the next *English* county to the said county of *Carmarthen* and the county of the borough of *Carmarthen* adjoining, and not elsewhere; and that the county of *Hereford* is an *English* county to the same county of *Carmarthen* and the county

county of the borough of *Carmarthen* adjoining; therefore the sheriff of the same county of *Hereford* is commanded, that he cause to come here on the octave of the purification of the blessed *Mary* 12, &c. of the nearer neighbourhood of his county to the neighbourhood of *St. Peter Carmarthen* aforesaid, and the parish of *Comon Vaughan* aforesaid and *Carmarthen* aforesaid and *Trisverkett*, otherwise *Trisverstett* aforesaid in the county of *Carmarthen* and the county of the borough of *Carmarthen* adjoining, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. And as to try the said other several issues between the parties aforesaid of and upon the premises aforesaid joined to be tried by the country, happening and arising within the said county of *Middlesex*, the sheriff of *Middlesex* is commanded, that he cause to come here at the said time 12, &c. of the neighbourhood of *Westminster*, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. On which day here come the parties aforesaid, &c. And as to try the said several issues between the same parties above joined to be tried by the country in the said county of *Middlesex*, the sheriff hath not returned the writ; therefore as before the sheriff of the county of *Middlesex* is commanded, that he cause to come here from the day of *Easter* in 15 days 12, &c. to recognize in form aforesaid, &c. And on the same octave of the purification of the blessed *Mary*, the jury aforesaid between the parties aforesaid in the plea aforesaid above to the country in the said county of *Hereford* joined was respited therein between them here until this day, to wit, the said *quinden.* of *Easter*, unless *E. Henden*, knt. one of the barons of the exchequer of the lord the king, justice of the same lord the king assigned to take assises in the county of *Hereford*, by the form of the statute, &c. had, first come on *Saturday* the 12th day of *March* next past at *Hereford* in the county of *Hereford* aforesaid: and now here on this day comes as well the said *J. Banks* as the said *Mary* by their attorney aforesaid; and the said justice of assise in the county of *Hereford* before whom, &c. hath sent here his record in these words: afterwards the day and place within contained, before *E. Henden*, knt. one of the barons of the exchequer of the lord the king, justice of the same lord the king, assigned to take assises in the county of *Hereford*, and *G. Craddock* to the same *E. Henden* this time associated, by the form of the statute, &c. comes the within named *J. Banks*, knt. by his attorney within contained; and the within written *M. Croft*, widow, altho' solemnly called, doth not come, but hath made default; therefore let the jury, whereof mention is within made, be taken against her by default; and the jurors of that jury being called, some of them, to wit, *W. Gilbert*, &c. come, and on that jury are sworn; and because the rest of the jurors of the same jury have not appeared, therefore others from the by-standers, by the sheriff of the county aforesaid hereto elected, at the request of the said *John*, and by the command of the justice aforesaid, are

Another venire
to Middlesex.

Nisi prius in
Hereford.

The postea.

Tales.

[507]

Verdict in cove-
nant on several
issues.

added anew, whose names to the pannel within written are annexed, according to the form of the statute in such case made and provided; and the jurors so added anew, to wit, *A. B. &c.* likewise come, who to say the truth of the within contained, together with the other jurors aforesaid first impanelled and sworn, being elected, tried and sworn, as to the breach of the covenant within written as to the non-payment to the said *John* at or upon the within written 20th day of *May* in the 14th year of the reign of the lord the now king within written, nor within 30 days next ensuing after the same 20th day of *May*, of 150*l.* of the within written rent of 300*l.* and the non-payment to the same *John* at or upon the within written 20th day of *October* in the 14th year aforesaid, nor within 30 days next ensuing after the same 20th day of *October* of other 150*l.* of the said rent of 300*l.* say on their oath, that the said *John* did not enter into the written parcel of land called *Conny Parke*, and the said *Mary* thereof eject, expel and amove, as the said *Mary* hath thereof within alledged; and they assess the damages of him the said *John* by reason of the breach of the covenant aforesaid, because the said *Mary* did not pay to the same *John* at or upon the said 20th day of *May* in the 14th year of the reign of the said lord the now king aforesaid, nor within 30 days next ensuing after the said 20th day of *May*, 150*l.* of the said rent of 300*l.* nor did pay to the same *John* at or upon the said 20th day of *October* in the 14th year aforesaid, nor within 30 days next ensuing after the same 20th day of *October*, other 150*l.* of the said rent of 300*l.* according to the form and effect of the within written indenture, between him the said *John* and the said *Mary*, and the within named *Lucy*, in form within mentioned made, besides his costs and charges by him about his suit in this behalf expended, to 300*l.* and for those costs and charges, &c.

Judgment by
default in an
ejectment by
original against
the casual eject-
or.

And the said defendant by *A. B.* his attorney comes and defends the force and injury when, &c. and says nothing in bar or preclusion of the action of the said plaintiff, but hath made default; whereby the same plaintiff remains against the said defendant therein undefended: wherefore it is considered, that the said plaintiff do recover against the said defendant his term yet to come of and in the tenements aforesaid with the appurtenances; and upon this the said plaintiff freely here in court releases to the said defendant all damages whatever, by reason of the trespass and ejectment aforesaid, to be adjudged to him, &c. therefore be the defendant from those damages quit, &c. And hereupon the said plaintiff prays the writ of the lord and lady the king and queen to the sheriff of the county aforesaid to be directed, to cause him to have his possession of his term aforesaid of and in the tenements aforesaid with the appurtenances yet to come; and to him it is granted, returnable, &c.

And the said defendant by *A. B.* his attorney comes and defends the force and injury when, &c. and upon this the said plaintiff prays, that the said defendant to his declaration aforesaid may answer; upon which the said attorney of the said defendant says, that he is not informed by the same defendant his master to give any answer for the said defendant to the same plaintiff in the plea aforesaid, nor says any thing else thereto in bar or preclusion of the action of the said plaintiff aforesaid; whereby the same plaintiff remains against the said defendant therein undefended: wherefore it is considered, that the said plaintiff do recover against the said defendant the possession of his term aforesaid yet to come of and in the tenements aforesaid with the appurtenances, and his damages by reason of the trespass and ejectment aforesaid: but because it is not known what damages the said plaintiff hath sustained by reason of the trespass and ejectment aforesaid, the sheriff is commanded, that by the oath of 12 good and lawful men of his bailiwick he diligently inquire what damages the said plaintiff hath sustained, as well by reason of the trespass and ejectment aforesaid, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which, &c. let the sheriff certify from the day of wheresoever, &c. under the seal, &c. and the seals, &c. The same day is given to the said plaintiff, &c. and upon this the same plaintiff prays the writ of the lord and lady the king and queen to the sheriff of the county aforesaid to be directed, to cause him to have possession of his term aforesaid of and in the tenements aforesaid with the appurtenances yet to come; and to him it is granted, returnable at the said time, &c.

Verdict in ejectment by not informed by original.

Pract. Reg.
105, 621.

Writ of possession awarded,

Mich. 7 W. 3. Roll. 23.

AND who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. from which day the jury aforesaid between the parties aforesaid in the plea aforesaid was respited between them before the lord the king at *Westminster* until then next following, for want of jurors, &c. On which day before the lord the king at *Westminster* come the parties aforesaid by their attorneys aforesaid; and the jurors of that jury impannelled being called likewise come, who to say the truth of the premisses being elected, tried and sworn, as to the first issue between the parties aforesaid above joined say, &c.

Verdict at bar.

Postea.

Dummer, Esq; and Fitch Esq;

The entry of the postea and verdict, part for the plaintiff and part for the defendant, in case for words where a full jury appeared.

18 El. c. 12.

12 G. c. 13.

Afterwards the day and year within contained, before *John Holt*, knt. the chief justice of the lord the king within named, *John Ince*, gent. being associated to him, by the form of the statute, &c. comes as well the within named *Edward Dummer*, esq; as the within written *John Fitch*, esq; by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called likewise come, who to say the truth of the within contained, being elected, tried and sworn, as to these *English* words within written, to wit, I have given Mr. *Dummer* 600*l.* as a bribe, say on their oath, that the said *John Fitch* is guilty of the speaking, pronouncing and publishing of the same *English* words, in manner and form as the said *E. D.* within thereof against him complains; and they assess the damages of him the said *Edward* by reason thereof, besides his costs and charges by him about his suit in this behalf expended, to 300*l.* and for those costs and charges to 20*s.* and as to the speaking, pronouncing and publishing of the residue of the words within written, the jurors aforesaid farther say on their oath, that the said *John* is not guilty thereof, as the said *John Fitch* hath within by pleading alledged: therefore it is considered, as to the speaking, pronouncing and publishing these *English* words aforesaid in the declaration aforesaid, to wit, I have given Mr. *D.* 600*l.* as a bribe, that the said *Edward D.* do recover against the said *John Fitch* the damages aforesaid by the jury aforesaid in form aforesaid assessed, and also 64*l.* for his costs and charges aforesaid to the same *Edward* by the court of the said lord the king now here with his assent of increase adjudged; which said damages in the whole amount to 364*l.* And the said *John* in mercy, &c. And also the said *Edward* for his false plaint against the said *John* as to the speaking, pronouncing and publishing of the residue of the *English* words in the declaration aforesaid specified, whereof the same *John* by the jurors aforesaid above in form aforesaid is acquitted; and let the said *John* go thereof without day, &c.

Process continued in *London* in debt.

Afterwards the proceedings thereof being continued between the parties aforesaid in the plea aforesaid by the jury aforesaid being put thereof between them in respite before the lord the king at *Westminster* until *Wednesday* next after three weeks of the holy *Trinity*, unless the trusty and beloved of the lord the king *F. Pemberton*, knt. the chief justice of the same lord the king,

king, assigned to hold pleas in the court of the said lord the king before the king himself, first come on *Tuesday* next after the said three weeks of the holy *Trinity* at the *Guildhall, London*, by the form of the statute, &c. for want of jurors, &c. On which day before the lord the king at *Westminster* come the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*, by their attorney aforesaid; and the said chief justice, before whom, &c. hath sent here his record in these words, to wit, afterwards the day and year within contained, before *F. Pemberton*, knt. the chief justice within named, *O. Smith*, gent. being associated to him, by the form of the statute, &c. come as well the within named master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*, as the within named *James Astwood* by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called likewise come, who to say the truth of the within contained being elected, tried and sworn, say on their oath, that the within named *James* doth owe to the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*, the within written 20*l.* in manner and form as they the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*, within against him the said *James* complain; and they assess the damages of them the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*, by reason of the detention of that debt, besides their costs and charges by them about their suit in this behalf sustained, to 12*d.* and for those costs and charges to 53*s.* 4*d.* Therefore it is considered, that the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*, do recover against the said *James Astwood* their debt aforesaid, and their damages aforesaid by the jury aforesaid in form aforesaid assessed, and also 12*l.* 5*s.* 8*d.* for their costs and charges to the same master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*, by the court of the said lord the king now here with their assent of increase adjudged; which said damages in the whole amount to 15*l.* And the said *James Astwood* in mercy, &c.

13 E. 1. c. 30.
12 E. 2. c. 4.
14 E. 3. c. 16.

The postea.

[509]

Without a
Tales.
Salk. 738, 750,
760.
Verdict on nil
debet.
See 1 Inst. 226.
Pract. Reg.
337, 643.

Judgment for
the plaintiffs.

Afterwards the day and place within contained, before *Edward Herbert*, knt. the chief justice within written, associated to him by the form of the statute, &c. comes as well the within named *John Parry* as the within written *Henry Hall*, gent. and *Anne Hall*, widow, by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called likewise come, who to say the truth of the within contained, were elected, tried and sworn, and from the bar here to consult together to give their verdict thereon withdrew, and having consulted together and agreed thereon

A nonsuit on
evidence where
a full jury ap-
pear.

thereon to give that verdict to the bar here returned; upon which the said *John Parry*, altho' solemnly called, doth not come, nor farther prosecute his writ within written against the said *Henry* and *Anne*: therefore, &c.

Verdict in ejectment on not guilty.
Salk. 725, 735.

SAY on their oath, that the said *Charles Trulshawe* is guilty of the trespass and ejectment within written in manner and form as the said *William* within against him thereof complains; and they assess the damages of the said *William Browne* by reason thereof, besides his costs and charges by him about his suit in this behalf expended, to 12 d. and for those costs and charges to 43 s. 4 d. Therefore, &c.

Tallant and Jermyn.

Postea in Middlesex in assumption.

78 El. c. 12.
32 G. c. 31.

Afterwards the proceedings thereof being continued between the parties aforesaid in the plea aforesaid by the jury therein between them being respited before the lord and lady the king and queen at *Westminster* until *Thursday* next after one month of *Easter* thence next ensuing, unless the trusty and well beloved of the lord and lady the king and queen *John Holt*, knt. the chief justice of the said lord and lady the king and queen, assigned to hold pleas in the court of the lord and lady the king and queen before the king and queen themselves, first come on *Wednesday* next after the said month of *Easter*; at *Westminster* in the great hall of pleas there, by the form of the statute, &c. for want of jurors, &c. On which day before the lord and lady the king and queen at *Westminster* comes the said *Humphry* by his attorney aforesaid; and the said chief justice of the lord and lady the king and queen, before whom, &c. hath sent here his record before him had in these words, to wit, afterwards the day and place within contained, before *John Holt*, knt. the chief justice within written, *John Ince*, gent. being associated to him, by the form of the statute, &c. comes the within named *Humphry Tallant* by his attorney within named; and the within written *John Jermyn*, altho' solemnly called, doth not come, but hath made default; therefore let the jury, whereof mention is within made, be taken against him by default; and the jurors of that jury being called, some of them, to wit, *T. Latchwell*, *Henry Gerrard*, *John Collins*, *Jonas Morley*, *T. Hollins*, *John Bayly*, *Richard Downes*, *Edward Slater*, *Edward Hansfear* and *James Partridge* come, and on that jury are sworn: but because the rest of the jurors of the same jury have not appeared, therefore others from the by-standers, by the sheriff of the county of *Middlesex* within written hereto elected, at the request of the said *Humphry*, and by the command of the chief justice aforesaid, are added anew: whose names to the panel within written are annexed, according to the form of the statute in such case lately made and provided; and the jurors so added anew, to wit, *Thomas Harris* and *Thomas Bamidge* being called likewise come,

who

Tales.
Salk. 725.

35 H. 8. c. 6.
7 & 8 W. 3.
c. 32. § 3.
3 G. 2. c. 25.

who to say the truth of the within contained, together with the other jurors aforesaid first impanelled and sworn, being elected, tried and sworn, say on their oath, that the within written *John Jermyn* did assume upon himself in manner and form as the said *Humphry Tallant* within against him complains; and they assess the damages of him the said *Humphry* by reason of the non-performance of the promises and assumptions within mentioned, besides his costs and charges by him about his suit in this behalf expended, to 86 *l.* and for those costs and charges to 20 *s.* Therefore it is considered, that the said *Humphry Tallant* do recover against the said *John Jermyn* his damages aforesaid by the jury aforesaid in form aforesaid assessed, and also 14 *l.* for his costs and charges aforesaid, to the same *Humphry* by the court of the said lord and lady the king and queen now here with his assent of increase adjudged; which said damages in the whole amount to 101 *l.* And the said *John* in mercy, &c.

Verdict for the plaintiff.

Judgment.

Rebow, Knt. and his wife and Honeywood.

SAY on their oath, that the within written *William Wilkinson* in his life-time after the within mentioned first day of *March* in the condition within written within mentioned, and before the day of the exhibition of the bill within written, did not pay to the within named *John Lemot Honeywood* the within mentioned 200 *l.* and the interest therefore due, as the said *George* within thereof in pleading hath alledged; and they assess the damages of them the said *Isaac* and *Elizabeth* by reason thereof, besides their costs and charges by them about their suit in this behalf expended, to 12 *d.* and for those costs and charges to 20 *s.* Therefore, &c.

Verdict for the plaintiff on payment at the day.

Elected, tried and sworn; and after evidence to them of and upon the premises given from the bar of this court to consult of their verdict of and upon the premises withdrew; and after the same jurors had consulted among themselves and agreed to the same bar to give their verdict in this behalf returned; upon which the said *Thomas Miffiter*, being solemnly called, doth not come, nor farther prosecute his bill against the said *Thomas Allett*: therefore, &c.

Nonsuit.

For the defendant's costs, according to the form of the statute 5 *l.* 10 *s.*

SAY on their oath, that the said *Katherine Franklyn* hath, and on the day of the exhibition of the bill within written of the said *R. J.* to wit, on the 10th day of *April* in the 25th year of the reign of the said lord the now king, had sundry goods and chattels which belonged to the within named *Richard Franklyn* at the time of his death in her hands to be administered, to the value of the debt within specified, wherewith she might have satisfied

Verdict for the plaintiff on fully administered.

tisfied

tified the same *J. R.* the debt aforesaid, to wit, at *Marlborough* within written in the county aforesaid; and they assess the damages of him the said *J. R.* by reason thereof, besides his costs and charges by him about his suit in this behalf expended, to 2 *d.* and for those costs and charges to 40 *s.* Therefore, &c.

[511]

Astie, who as well, &c. and Fiffenden.

Verdict, part
for the plaintiff
and part for the
defendant on
nil debet.

Elected, tried and sworn: as to 20*l.* of the within written 200*l.* parcel, to wit, for the last month of the within written ten months in which the said *Thomas* from church, chapel, or place of common prayer and preaching, or other divine service there, as within is said, had absented himself, against the form of the statute within mentioned, say on their oath, that the said *Thomas* doth owe to the said lord the king and the said *Samuel*, who as well, &c. the same 20*l.* and every penny thereof, in manner and form as the said *Samuel*, who as well, &c. within against him complains: and as to 180*l.* the residue of the said 200*l.* the jurors aforesaid farther say on their oath aforesaid, that the said *Thomas* doth not owe to the said lord the king and the said *Samuel*, who as well, &c. the same 180*l.* nor any penny thereof, as the said *Thomas* within in pleading hath alledged: therefore, &c.

Verdict for the
plaintiff, that
the articles are
the deed, &c.

SAY on their oath, that the articles of agreement within specified in the declaration within written mentioned, are the deed of them the said *Nicholas* and *Thomas*, as the same *Francis* within against them complains; and they assess the damages of him the said *Francis* by the occasion within written, besides his costs and charges by him about his suit in this behalf expended, to 3 *l.* 12 *s.* 6 *d.* and for those costs and charges to 53 *s.* 4 *d.* Therefore, &c.

Verdict for the
defendant on
an assault.

Elected, tried and sworn: as to the first issue within written between the said *John* and the said *Hugh* within joined, as to the force and arms, or whatever that is against the peace of the said lord the king, and also the wounding, maiming, striking and beating out the left eye of the said *John* within supposed to be done, say on their oath, that the said *Hugh* is not guilty thereof, as the same *Hugh* within in pleading hath alledged; and as to the other issue within written between the parties aforesaid within likewise joined, as to the residue of the trespass within written within supposed to be done, the jurors aforesaid on their oath aforesaid farther say, that the said *John* the day and year within written in the declaration within written within specified, at *Codfoll* within written in the county of *Stafford* aforesaid, with force and arms, &c. on the said *Hugh* did make an assault, and him then and there would have beat, wounded and abused, unless the same *Hugh* had then and there immediately defended himself against the said *John*, and so the damage
and

and mischief which to the same *John* then and there happened was from the proper assault of him the said *John*, and in the defence of the said *Hugh*, as the same *Hugh* within in pleading hath alledged : therefore, &c.

SAY on their oath, that the said *Thomas King* and *Obadiah Reynolds* are not guilty of the trespass in the declaration within specified, as the said *Thomas King* and *Obadiah Reynolds* have within by pleading alledged : therefore, &c.

For the defendants on not guilty in trespass.

SAY on their oath, that the said *Edward Prodgers* at any time within six years next before the prosecution of that writ did not break and enter the house of him the said *Thomas Tompkins*, nor take and carry away the goods and chattels and money of him the said *Thomas* within contained, as the said *Thomas* within by replying hath alledged, &c.

For the defendant in trespass on the statute of limitations pleaded.

SAY on their oath, that he the said *Edward* at the within mentioned time of the exhibition of the bill of him the said *Robert Wrightston* within specified, had fully administred all the goods and chattels which belonged to the said *Thomas* within specified at the time of his death in his hands to be administred, and that he the same *Edward* hath not, nor on the day of the exhibition of the bill within specified, or ever after, had any goods or chattels which belonged to the said *Thomas* at the time of his death in his hands to be administred, wherewith he could pay to the said *Thomas Wrightston* the debt within specified, or any penny thereof, as he in the bar of him the said *E.* within by pleading hath alledged : therefore, &c.

Verdict for the defendant on fully administred.

[512]

SAY on their oath, that the said *William* hath not observed, performed, fulfilled or kept any covenants, grants, articles, clauses, contracts, conditions and agreements in the within written articles of agreement indented contained and specified on the part of the said *William* to be observed, performed, fulfilled and kept, according to the form and effect of the articles of agreement indented within written, as the said *George* within against him complains ; and they assess the damages of him the said *George* by the occasion within written, besides his costs and charges by him about his suit in this behalf expended, to 11*l.* 9*s.* and for those costs and charges to 40*s.* Therefore, &c.

Verdict for the plaintiff in covenant on conditions performed.

SAY on their oath, that the said *Peter Wentworth* is guilty of the trespass and ejectment within written, in manner and form as the said *George Pearse* within against him complains ; and they assess the damages of him the said *George* by reason of that trespass and ejectment, besides his costs and charges by him about his suit in this behalf expended, to 6*d.* and for those costs and charges to 40*s.* Therefore, &c.

For the plaintiff in ejectment.

For the plaintiff
on payment at
the day.

SAY on their oath, that the said *Humphry Broughton* did not pay the within written sum of 10 *l.* 8 *s.* to the within named *John Barker* on the within written 24th day of *December* in the condition within written within specified, in manner and form as the said *Humphry* within thereof in pleading hath alledged; and the same jurors assess the damages, &c.

For the plaintiff
on not his deed.
Salk. 750.

SAY on their oath, that the writing obligatory within mentioned is the deed of the within named *John Griffin*, as the within written *Samuel Harrison* hath within against him declared; and they assess the damages of the within named *Samuel Harrison* by reason of the detention of that debt, besides his costs and charges by him about his suit in this behalf expended, to 12 *d.* and for those costs and charges to 20 *s.* Therefore, &c.

For the plaintiff
on nonage
pleaded.

SAY on their oath, that the within named *John Styles* at the time of the making, sealing and delivery of the within mentioned writing obligatory, was of the full age of 21 years and more, in manner and form as the said *Charles Smith* within by replying hath alledged; and they assess the damages of the said *Charles* by reason of the detention of the debt within written, besides his costs and charges by him about his suit in this behalf expended, to 12 *d.* and for those costs and charges to 20 *s.* Therefore, &c.

Where a jury
is withdrawn.

WERE elected, tried and sworn; upon which for certain reasons, as well to the justices aforesaid as to the parties aforesaid appearing, the said *Edward Swayles*, one of the jurors of the jury within written, from the panel aforesaid is withdrawn, and the rest of the jurors of that jury are wholly discharged from giving any verdict of and upon the premises within written, &c.

For the defen-
dant on proper-
ty pleaded in
replevin.

SAY on their oath, that the property of the cattle within named at the within written time of the taking of them was in *Mary lady Digby*, as the said *Mary lady Digby* within by replying hath alledged; and they assess the damages of the said *Mary lady Digby* by the occasion within written, besides her costs and charges by her about her suit in this behalf expended, to 6 *d.* and for those costs and charges to 53 *s.* 4 *d.* Therefore, &c.

[513]

Verdict in
ejectment on a
double demise,
part for the
plaintiff, part
for the defen-
dant.

ELected, tried and sworn: as to the trespass and ejectment in one messuage and 12 acres of land, parcel of the tenements in the declaration within written within mentioned, say on their oath, that the said *Sarah Hudson* is thereof guilty, as the said *Edward Munday* within thereof against her complains: and as to the trespass and ejectment in 10 acres of pasture, other parcel of the tenements within written, the jurors aforesaid farther say on their oath aforesaid, that the said *Sarah* is not thereof guilty, as she within by pleading hath alledged; and as to the trespass and

and ejectment in a moiety of the residue of the tenements within written, the jurors aforesaid farther say on their oath aforesaid, that the said *Sarah* is thereof guilty in manner and form as the said *Edward Munday* within thereof against her likewise complains; and they assess the damages of him the said *Edward Munday* by reason of the trespass and ejectment aforesaid, besides his costs and charges by him about his suit in this behalf expended, to 12 *d.* and for those costs and charges to 40 *s.* And as to the trespass and ejectment in the residue of the tenements in the declaration aforesaid within likewise specified, the jurors aforesaid farther say on their oath aforesaid, that the said *Sarah* is not thereof guilty in manner and form as she within likewise by pleading hath alledged: therefore, &c.

SAY on their oath, that the said *Robert* did not inclose and stop up the way within mentioned, nor him the said *Philip* from the use and possession of the way within written hinder, eject, expel and amove, in manner and form as the said *Robert* within for himself by replying hath alledged; and they assess the damages of him the said *Robert* by the occasion within written, &c.

For the defendant in trespass for stopping a way.

ELected, tried and sworn: as to the first issue between the parties aforesaid within joined, say on their oath, that the said *John Hulbert* at the within written time when, &c. the close within written in which, &c. out of the said foot way did not break nor enter, nor the grass within written then and there growing, to the value of 10 *l.* out of the way within written with his feet by walking tread down and destroy, as the same *John Hulbert* within thereof by pleading hath alledged: and as to the second issue between the parties aforesaid within likewise joined, the same jurors farther say on their oath aforesaid, that the hedges and ditches within written between the within written close in which, &c. and the within written common lane at the within written time when, &c. were not wholly ruinous, nor in decay nor insufficient, in manner and form as the said *Thomas Hancock* within by pleading hath alledged; and they assess the damages of him the said *Thomas* by reason of the trespass in that issue specified, besides his costs, &c.

In trespass, part for the plaintiff, and part for the defendant.

SAY on their oath, that the said *Thomas* within six years next before the within written day of the exhibition of the bill within specified of the said *Edward*, to wit, on the within written first day of *April* in the 33d year of the reign of the lord *Charles the Second*, now king of *England*, &c. in the declaration within written within specified, did assume upon himself in manner and form as the said *Edward* within by replying hath alledged; and they assess the damages, &c.

For the plaintiff on non assumpsit infra sex annos.

For the plaintiff
on payment at
the day.

SAY on their oath, that the said *Humphry Broughton* did not pay the within written sum of 10 *l.* 8 *s.* to the within named *John Barker* on the within written 24th day of *December* in the condition within written within specified, in manner and form as the said *Humphry* within thereof in pleading hath alledged; and the same jurors assesse the damages, &c.

For the plaintiff
on not his deed.
Salk. 750.

SAY on their oath, that the writing obligatory within mentioned is the deed of the within named *John Griffin*, as the within written *Samuel Harrison* hath within against him declared; and they assesse the damages of the within named *Samuel Harrison* by reason of the detention of that debt, besides his costs and charges by him about his suit in this behalf expended, to 12 *d.* and for those costs and charges to 20 *s.* Therefore, &c.

For the plaintiff
on nonage
pleaded.

SAY on their oath, that the within named *John Styles* at the time of the making, sealing and delivery of the within mentioned writing obligatory, was of the full age of 21 years and more, in manner and form as the said *Charles Smith* within by replying hath alledged; and they assesse the damages of the said *Charles* by reason of the detention of the debt within written, besides his costs and charges by him about his suit in this behalf expended, to 12 *d.* and for those costs and charges to 20 *s.* Therefore, &c.

Where a jury
is withdrawn.

WERE elected, tried and sworn; upon which for certain reasons, as well to the justices aforesaid as to the parties aforesaid appearing, the said *Edward Swayles*, one of the jurors of the jury within written, from the panel aforesaid is withdrawn, and the rest of the jurors of that jury are wholly discharged from giving any verdict of and upon the premises within written, &c.

For the defen-
dant on proper-
ty pleaded in
replevin.

SAY on their oath, that the property of the cattle within named at the within written time of the taking of them was in *Mary lady Digby*, as the said *Mary lady Digby* within by replying hath alledged; and they assesse the damages of the said *Mary lady Digby* by the occasion within written, besides her costs and charges by her about her suit in this behalf expended, to 6 *d.* and for those costs and charges to 53 *s.* 4 *d.* Therefore, &c.

[513]

Verdict in
ejectment on a
double demise,
part for the
plaintiff, part
for the defen-
dant.

Elected, tried and sworn: as to the trespasss and ejectment in one messuage and 12 acres of land, parcel of the tenements in the declaration within written within mentioned, say on their oath, that the said *Sarah Hudson* is thereof guilty, as the said *Edward Munday* within thereof against her complains: and as to the trespasss and ejectment in 10 acres of pasture, other parcel of the tenements within written, the jurors aforesaid farther say on their oath aforesaid, that the said *Sarah* is not thereof guilty, as she within by pleading hath alledged; and as to the trespasss and

and ejectment in a moiety of the residue of the tenements within written, the jurors aforesaid farther say on their oath aforesaid, that the said *Sarah* is thereof guilty in manner and form as the said *Edward Munday* within thereof against her likewise complains; and they assess the damages of him the said *Edward Munday* by reason of the trespass and ejectment aforesaid, besides his costs and charges by him about his suit in this behalf expended, to 12 *d.* and for those costs and charges to 40 *s.* And as to the trespass and ejectment in the residue of the tenements in the declaration aforesaid within likewise specified, the jurors aforesaid farther say on their oath aforesaid, that the said *Sarah* is not thereof guilty in manner and form as she within likewise by pleading hath alledged: therefore, &c.

SAY on their oath, that the said *Robert* did not inclose and stop up the way within mentioned, nor him the said *Philip* from the use and possession of the way within written hinder, eject, expel and amove, in manner and form as the said *Robert* within for himself by replying hath alledged; and they assess the damages of him the said *Robert* by the occasion within written, &c.

For the defendant in trespass for stopping a way.

ELected, tried and sworn: as to the first issue between the parties aforesaid within joined, say on their oath, that the said *John Hulbert* at the within written time when, &c. the close within written in which, &c. out of the said foot way did not break nor enter, nor the grafs within written then and there growing, to the value of 10 *l.* out of the way within written with his feet by walking tread down and destroy, as the same *John Hulbert* within thereof by pleading hath alledged: and as to the second issue between the parties aforesaid within likewise joined, the same jurors farther say on their oath aforesaid, that the hedges and ditches within written between the within written close in which, &c. and the within written common lane at the within written time when, &c. were not wholly ruinous, nor in decay nor insufficient, in manner and form as the said *Thomas Hancock* within by pleading hath alledged; and they assess the damages of him the said *Thomas* by reason of the trespass in that issue specified, besides his costs, &c.

In trespass, part for the plaintiff, and part for the defendant.

SAY on their oath, that the said *Thomas* within six years next before the within written day of the exhibition of the bill within specified of the said *Edward*, to wit, on the within written first day of *April* in the 33d year of the reign of the lord *Charles the Second*, now king of *England*, &c. in the declaration within written within specified, did assume upon himself in manner and form as the said *Edward* within by replying hath alledged; and they assess the damages, &c.

For the plaintiff on non assumpsit infra sex annos.

That the testator did not assume.

SAY on their oath, that the within named *William Bulkeley*, the testator, in his life-time did not assume upon himself in manner and form as the said *William Pemberton* hath within declared: therefore, &c.

[514]

Croxall, who as well, &c. and The Inhabitants of the hundred of Hemlingford.

For the plaintiff on the statute of hue and cry.

* The requisites to maintain, and the method of proceeding in this

SAY on their oath, that the said men, inhabitants within the hundred of *Hemlingford* aforesaid, are guilty of the premises within written within charged on them, against the form of the * statute within written, as the said *Josias Croxall*, who as well, &c. within against them thereof complains; and they assents the damages, &c.

action, are alter'd by 8 G. 2. c. 16.

Alexander against Woods and another.

Nonsuit on an issue in a writ of error.

WERE elected, tried and sworn, and from the bar here to consult to give their verdict thereon withdrew, and having consulted together and agreed thereon to the bar here returned; upon which the said *John Osgood* and *Nathaniel Rouse*, altho' solemnly called, do not come, nor farther prosecute their writ within specified against the said *John Alexander*: therefore, &c.

For costs, by reason of the delay of execution, 18 l.

Compton, Knt. against The Earl of Kildare.

For the plaintiff on non assumpsit infra sex annos.

SAY on their oath, that the said *Almerick de Coursey* within six years next before the within written day of the issuing of the within written original writ of the said *Francis Compton*, knt. did assume upon himself in manner and form as the said *Francis* within by replying hath alledged; and they assents the damages of him the said *Francis* by reason of the non-performance of the promises and assumptions within written, besides his costs and charges by him about his suit in this behalf expended, to 322 l. 10 s. and for those costs and charges to 20 s. Therefore, &c.

Fovargne against Hampson.

In trespass, part for the plaintiff, part for the defendant.

ELECTED, tried and sworn: as to the taking and carrying away of one haycock in the declaration within written within specified, say on their oath, that the said *James Hampson* is thereof guilty, as the said *David Fovargne* within against him complains; and they assents the damages of him the said *David Fovargne* by reason thereof, besides his costs and charges by him about his suit in this behalf expended, to 8d. And as to the trespass

trespafs within written, as to the taking and carrying away of the bridges in the declaration aforefaid within specified, the jurors aforefaid on their oath aforefaid fay, that the faid *Peter Elam* is thereof guilty, as the faid *David Fovargne* within thereof againft him complains; and they affefs the damages of him the faid *David* by reason thereof, besides his costs and charges by him about his fuit in this behalf expended, to 20 s. and for thofe costs and charges againft them the faid *James Hampfon* and *Peter Elam* to 53 s. 4 d. And as to the refidue of the trespafs in the declaration aforefaid within specified, other than of and in the taking and carrying away of the faid haycock, the jurors aforefaid on their oath aforefaid fay, that the faid *James* is not thereof guilty: and as to the other refidue of the trespafs aforefaid in the declaration aforefaid within specified, other than of and in the carrying away of the bridges aforefaid, the fame jurors likewise on their oath aforefaid fay, that the faid *Peter* is not thereof guilty, as the fame *James* and *Peter* have thereof alledged: and the jurors aforefaid on their oath aforefaid fay, that the faid *Thomas Warrell* is in no wife guilty of the trespafs within written, as the faid *Thomas Warrell* hath within for himfelf by pleading alledged: therefore, &c.

Sibfon againft Atkinfon.

[515]

ELECTED, tried and sworn: as to the first issue between the parties aforefaid within joined, as to the force and arms, and alfo the biting of the fheep within written with the dogs within written; the jurors aforefaid on their oath fay, that the faid *Gerard* is thereof guilty, as the faid *Leonard* within againft him thereof complains: and as to the refidue of the trespafs within written within fupposed to be committed, whereon the fecond issue is within joined, the jurors aforefaid farther on their oath aforefaid fay, that the faid *Leonard*, as a customary tenant of the within written manor of *Holmecultram* within specified, and all thofe whose estate he hath, and at the within written time when, &c. had, of and in the within mentioned meffuage with the appurtenances, for time immemorial have had, and been accustomed to have, for themfelves, their tenants and farmers, of the fame meffuage with the appurtenances common of pasture, according to the custom of the manor aforefaid, for all their fheep in the faid pasture called *Buil Mofse* in *Newtowne*, otherwise *Mawbrey* in the parish of *Newtowne Arlofhe* within written in the county aforefaid, every year at all times of the year, as to the faid meffuage belonging and appertaining, in manner and form as the faid *Leonard* within by replying hath alledged; and they affefs the damages of him the faid *Leonard* by the occafion within written, besides his costs and charges by him about his fuit in this behalf expended, to 2 d. and for thofe costs and charges to 40 s. Therefore, &c.

Otherwise.

Bolsworth against Pilkington.

Verdict, part for the plaintiff, and part for the defendant, in case for words.

ELECTED, tried and sworn: as to these *English* words within written, to wit, you are a pitiful broken fellow, and are not able to pay your debts, say on their oath, that the said *Thomas Pilkington* is guilty of the saying, speaking, proclaiming, publishing and pronouncing of the same *English* words, in manner and form as the said *Edward Bolsworth* within against him thereof complains; and they assess the damages of him the said *Edward Bolsworth* by the occasion aforesaid, besides his costs and charges by him about his suit in this behalf expended, to 800*l.* and for those costs and charges to 40*s.* And as to the saying, speaking, proclaiming, publishing and pronouncing the residue of the *English* words within specified, the jurors aforesaid on their oath aforesaid farther say, that the said *Thomas Pilkington* is not thereof guilty, as the same *Thomas* within by pleading hath alledged: therefore it is considered, that the said *Edward Bolsworth* do recover against the said *Thomas* the damages aforesaid by the jury aforesaid in form aforesaid assessed, and also 11*l.* 6*s.* 8*d.* to the same *Edward* for his costs and charges aforesaid, by the court of the lord the king now here with his assent of increase adjudged; which said damages in the whole amount to 813*l.* 6*s.* 8*d.* And the said *Thomas* in mercy: and likewise the said *Edward* in mercy for his false plaint against the said *Thomas*, as to the said residue of the words whereof the same *Thomas* by the jurors aforesaid in form aforesaid is acquitted: and let the said *Thomas* go thereof without day, &c.

Smith against Farmer.

In ejectment, part for the plaintiff, and part for the defendant.

ELECTED, tried and sworn: as to the trespass and ejectment within written of and in two messuages, 10 cottages, 150 acres of land, 100 acres of meadow, 150 acres of pasture with the appurtenances in *Slawston*, *Harborough* and *Bowden Magna*, and of and in a moiety of the manor of *Harborough* aforesaid with the appurtenances, and also of and in a moiety of the fairs and markets of *Harborough* aforesaid, and of all toll, stallage, piccage, pontage, and other perquisites, profits, customs and privileges to the same manor, fairs and markets belonging and appertaining, in the declaration within written within specified, say on their oath, that the said *W. Farmer* is thereof guilty, as the said *G. Smith* within thereof against him complains; and they assess the damages of him the said *George* by the occasion within written, besides his costs and charges by him about his suit in this behalf expended, to 6*d.* and for those costs and charges to 53*s.* 4*d.* And as to the residue of the trespass and ejectment within written of and in three messuages, 10 cottages, 250 acres of land, 100 acres of meadow, and 250 acres of pasture with the appurtenances in *Welham* in the declaration within

within written within likewise specified, the same jurors farther on their oath aforesaid say, that the said *William Farmer* is not thereof guilty, as the said *William Farmer* within for himself by pleading thereof hath alledged: therefore it is considered, that the said *George* do recover against the said *William* his term aforesaid of and in the said two messuages, 10 cottages, 150 acres of land, 100 acres of meadow, 150 acres of pasture with the appurtenances in *Slawston*, *Harborough* and *Bowden Magna*, and of and in a moiety of the manor of *Harborough* aforesaid with the appurtenances, and also of and in a moiety of the fairs and markets of *Harborough* aforesaid, and of all tolls, stallage, piccage, pontage, and other perquisites, profits, customs and privileges to the same manor, fairs and markets belonging and appertaining, whereof it is above found by the jurors aforesaid, that the said *William Farmer* is guilty of the trespass and ejectment aforesaid yet to come, and his damages aforesaid, to 53 s. 10 d. by the jurors aforesaid in form aforesaid assessed, and also 12 l. 6 s. 2 d. to the same *George* at his request, for his costs and charges aforesaid, by the court here of increase adjudged; which said damages in the whole amount to 15 l. And the same *William Farmer* is pardoned, &c. And the said *George* in mercy for his false plaint against the said *William* for the residue of the trespass and ejectment aforesaid, whereof the said *William* by the jurors aforesaid is above acquitted: and let the said *William Farmer* go thereof without day, &c. And upon this the said *George* prays the writ of the lord and lady the king and queen to be directed to the sheriff of the county aforesaid, to cause him to have possession of his term aforesaid of and in the said two messuages, 10 cottages, 150 acres of land, 100 acres of meadow, 150 acres of pasture with the appurtenances in *Slawston*, *Harborough* and *Bowden Magna*, and of and in a moiety of the manor of *Harborough* aforesaid with the appurtenances, and also of and in a moiety of the fairs and markets of *Harborough* aforesaid, and of all tolls, stallage, piccage, pontage, and other perquisites, profits, customs and privileges to the same manor, fairs and markets belonging and appertaining, above as aforesaid adjudged to him; and to him it is granted, returnable here from the day of *St. Michael* in three weeks, &c.

Judgment.

Pardon.

Habere facias possessionem
prayed.

Sparrow against Dunch and others.

ELECTED, tried and sworn: as to the issue between the said *Anne* and the said *Lyming* and *Francis* within joined, say on their oath, that the same *Lyming* and *Francis* are not guilty of the premisses within charged on them, as the said *Lyming* and *Francis* within by pleading have alledged: and as to the first issue between the said *Anne* and the said *William Dunch* within joined, to wit, as to the force and arms, and whatever that is against the peace of the said lady the now queen, and also the whole trespass within mentioned, except the assault, beating, abusing, taking

Verdict in
assault and false
imprisonment,
part for the
plaintiff and
part for the
defendant.

taking and imprisonment, and detaining and keeping in prison of the said *Anne* for the space of eight hours, part of the within mentioned 24 hours, the jurors aforesaid on their oath aforesaid farther say, that the said *William* is guilty in manner and form as the said *Anne* within against him complains: and as to the second issue between the said *Anne* and the said *William Dunch* within joined, to wit, as to the assault, beating, abusing, taking and imprisonment, and detaining and keeping in prison of the said *Anne* for the space of eight hours, the jurors aforesaid on their oath aforesaid farther say, that the said *William Dunch* on the day and year in the declaration within written specified, of his own wrong, without any such cause by him the said *William* in his plea within pretended, on the said *Anne*, at the parish of *St. Sepulchre* in the county within written, did make an assault, and her the said *Anne* did beat, abuse, take, imprison, and in prison there did detain and keep, in manner and form as the said *Anne* within against him complains; and they assess the damages of her the said *Anne Sparrow* by reason thereof, besides her costs and charges by her about her suit in this behalf expended, to 40 s. and for those costs and charges to 20 s. Therefore, &c.

Rosewell against Prior.

In case for
continuing the
stopping up the
plat tiff's
lights.

[517]

ELECTED, tried and sworn: as to the continuance of the building within written in the declaration aforesaid last mentioned to be by the said *Samuel* erected and built in the issue between the parties aforesaid within joined mentioned, say on their oath, that the said *Samuel* is thereof guilty in manner and form as the said *Nathaniel* within against him thereof complains; and they assess the damages of him the said *Nathaniel*, by reason of the continuance of the building aforesaid last mentioned, and so by the said *Samuel* within mentioned to be erected and built, besides his costs and charges by him about his suit in this behalf expended, to 100 l. and for those costs and charges to 20 s. And as to the continuance of the building within mentioned in the declaration aforesaid within first mentioned to be by him the said *Samuel* erected and built, if judgment on the demurrer in law in that behalf within written, whereof the parties aforesaid have within put themselves on the judgment of the court, happens to be given for the said *Nathaniel* against the said *Samuel*, then the jurors aforesaid assess the damages of him the said *Nathaniel*, by reason of the continuance of the building aforesaid, as aforesaid first mentioned to be by the said *Samuel* erected and built, besides the damages and costs aforesaid above by them assessed for the continuance of the building aforesaid last mentioned to be erected and built in issue put, to 1d. Therefore, &c.

Freake and others against Heskett, clerk.

SAY on their oath, that the within named *Elizabeth Cabell* was seised of the rectory of the church within mentioned, to which, &c. in her demesne as of fee, in manner and form as the within named *Thomas Freake*, *C. Cooke* and *Charles D'Oyly*, within by declaring have alledged : and farther the jurors aforesaid, being asked by the court, whether the vicarage of the church aforesaid is full or not ; and if it be full, then of whose presentation it is full, and what time hath elapsed since the vicarage of the church aforesaid last became vacant, and what the vicarage of that church is worth a year in all issues, besides reprises, according to the true value of the same, say on their oath, that the said vicarage of the church within written is full and consulted of the within named *Thomas Heskett* of the presentation of the most serene lord *William* the Third, now king of *England*, &c. and that the vicarage of the church aforesaid last became vacant on the 25th day of *December* in the year of the Lord 1697, by the death of the within named *Humphry Samptbill*, the last incumbent of the vicarage of that church ; and that the said *Thomas Freake*, *Charles Cooke* and *Charles D'Oyly*, prosecuted their original writ against the within named bishop and the said *Thomas Heskett* on the 20th day of *May* in the 10th year of the reign of the lord *William* the Third, now king of *England*, &c. and that the vicarage of that church is worth 60 *l.* a year in all issues, besides reprises ; whereupon the same *Thomas Freake*, *Charles Cooke* and *Charles D'Oyly*, according to the form of the statute in such case made and provided, instantly pray judgment of and upon the premisses, and a writ to the bishop, the ordinary, &c. to be directed, to remove the said *Thomas Heskett* from the vicarage of the church aforesaid, and to admit a proper person to the vicarage of that church on the presentation of them the said *Thomas Freake*, *Charles Cooke* and *Charles D'Oyly*, and their damages, to wit, the value of the vicarage of the church aforesaid for half a year, by the jurors aforesaid in form aforesaid assessed : therefore it is considered by the court here, that the said *Thomas Freake*, *Charles Cooke* and *Charles D'Oyly*, do recover against the said *Thomas Heskett* their presentation to the vicarage of the church aforesaid, which now is full, of him the said *Thomas Heskett* of the presentation of the lord the king, and their damages, to the value of the vicarage of the church aforesaid, for half a year, which amount to 30 *l.* by the jurors aforesaid in form aforesaid assessed ; and that they have a writ to the said bishop, the ordinary of that place, that notwithstanding his reclaim, or the reclaim of the said *Thomas Heskett*, or either of them, altho' the same *Thomas* to the vicarage of the church aforesaid is admitted, instituted and inducted, the same *Thomas Heskett* from the vicarage of the church aforesaid he remove, and admit a proper person to the vicarage of that church, on the presentation of them

Verdict for the plaintiff in a *quare impedit*.

the said *Thomas Freake*, *Charles Cooke* and *Charles D'Oly*: and the said *Thomas Heskett* in mercy, &c.

Clarke and Masters and others.

Non suit at the
assises in trespass
against an
officer.

[518]

WERE elected, tried and sworn; and it was given in evidence to the jurors aforesaid on the part of the said *John Masters*, *William Goode* and *Thomas Holmes*, that the said *John Masters* was an headborough, and that what he did was in the execution of his office of headborough aforesaid, and that what the said *William Goode* and *Thomas Holmes* did was in aid of the said *J. Masters*, and by his command; whereupon the jurors aforesaid from the bar here to consult to give their verdict thereon withdrew, and having consulted among themselves and agreed thereon, to give their verdict thereon to the bar here returned; whereupon the said *Thomas Clarke*, altho' solemnly called, doth not come, nor farther prosecute his bill within written against the said *John Masters*, *William Goode* and *Thomas Holmes*: therefore, &c.

The judge's
certificate.

The defendants justify as headborough.

J. Holt.

Bluck and Wright one, &c.

Verdict for the
plaintiff on a
feigned issue.

Afterwards the day and place within contained, before *John Holt*, knt. the chief justice within written, *John Ince*, gent. being associated to him, by the form of the statute, &c. comes as well the within named *William Bluck* the executor by his attorney within contained, as the within written *Henry Wright* in his proper person; and the jurors of the jury, whereof mention is within made, being called likewise come, who to say the truth of the within contained, being elected, tried and sworn, say on their oath, that the tallies and orders within mentioned were not delivered, neither was any of them delivered by the within named *William* the testator to the said *Henry* by way of gift of the principal money due on those tallies and orders, to the proper use and benefit of the said *Henry*, in manner and form as the said *William* the executor hath within by declaring alledged; and they assess the damages of him the said *William* the executor by the occasion within contained, besides his costs and charges by him about his suit in this behalf expended, to 12 *d.* and for those costs and charges to 53 *s.* 4 *d.* Therefore, &c.

Blandford and Ives.

Verdict in
replevin as to
part, that the
defendant did
not take nor
detain.

ELECTED, tried and sworn: as to the taking and unjust detention of one rope of the within written three ropes by him the said *Thomas Ives* within supposed to have been taken and unjustly detained, in the first issue between the parties aforesaid within

within joined mentioned, say on their oath, that the said *Thomas Ives* did not take nor detain that rope, as the same *Thomas* hath within thereof by pleading alledged : and as to the within written gelding and rope of the within mentioned two geldings and ropes within first mentioned in the second issue between the parties aforesaid within joined specified, the jurors aforesaid farther say on their oath, that the said *John Blandford* did not offer to pay to him the said *Thomas Ives* the within mentioned 6*l.* 13*s.* in the plea within written first mentioned specified, as the same *Thomas* hath within thereof by rejoining alledged : and as to the gelding and rope of the within mentioned two geldings and ropes within last mentioned in the third issue within joined specified, the jurors aforesaid farther say on their oath, that the said *John Blandford* did not offer to pay to him the said *Thomas Ives* the within mentioned 6*l.* 13*s.* in the plea within written last mentioned specified, as the same *Thomas* hath within thereof by rejoining alledged : therefore, &c.

As to the residue, that the plaintiff did not make any tender.

Jacobson and another and Lees.

SAY on their oath, that the said *Walter* on the within mentioned 20th day of *February* in the 4th year of the reign of the lady the queen within written in the declaration of the said *Theodore* and *James* within specified, did not of his own wrong, but for such cause by him the said *Walter* in his avowry within written alledged in the within mentioned place in which, &c. take the goods and chattels within contained of them the said *Theodore* and *James* in the declaration of them the said *Theodore* and *James* within specified, and them detain until, &c. as he lawfully might, as the said *Walter* hath within by pleading alledged : therefore, &c.

Verdict in replevin for the defendant.

Recognisance.

[519]

England, BE it remember'd, that on *Thursday* next after 15 to wit. B days of *Easter* in this same term before the lady the queen at *Westminster*, by *John Turton*, knt. one of the justices of the said lady the queen, assigned to hold pleas before the queen herself here, it is recorded, that on the 14th day of *February* last past, before him the said justice, at his chambers situate in *Serjeants-Inn* in *Fleet-street*, *London*, came *John Rose* of *Mark-lane*, *London*, merchant, and *Timothy Poston* of the same, merchant, in their proper persons, and according to the form of the statute for preventing unnecessary delay of execution thereof made and provided, acknowledged that they owed, and each of them acknowledged that he owed, to *Andrew Stone*, merchant,

The entry of a recognisance on a writ of error on a judgment in K. B. Salk. 564, 659. Pract. Reg. 417.

1025 *l.* of lawful money of *England*, to be paid to the same *Andrew*, his executors or assigns; and unless they shall do it, the same *John* and *Timothy* grant, and each of them grants, that the said 1025 *l.* shall be made of their and each of their lands and chattels, and to the use of him the said *Andrew* levied: the condition of the said recognisance is such, that whereas the said *Andrew Stone* hath lately in the court of the lord *William* the Third, late king of *England*, before the said late king himself, at *Westminster* by bill, without the writ of the said late king, and by the judgment of the same court, recovered against *Nathaniel Long*, merchant, 512 *l.* 10 *s.* for his damages which he hath sustained, as well by reason of a certain trespass on the case to the same *Andrew* by the said *Nathaniel* done, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as it appears on record in the court of the lady the now queen: and whereas the said *Nathaniel* hath prosecuted a writ of error upon the judgment aforesaid, returnable before the justices of the common bench and the barons of the exchequer of the degree of the coif in the exchequer chamber on *Saturday* the 25th day of *April* in the first year of the said lady the now queen; if therefore the said *Nathaniel* doth prosecute the said writ of error with effect, and if the judgment aforesaid be affirmed against the said *Nathaniel*, then if the same *Nathaniel* do satisfy and pay to the said *Andrew* the damages aforesaid, and also all such costs and damages as shall be adjudged to the said *Andrew* by reason of the delay of his execution of the judgment aforesaid by the pretence of the prosecution of the said writ of error, then this present recognisance to be void and of no effect, otherwise to remain in its full force and effect.

The entry of a
recognisance on
a *capias* in case
in *C. B.*

Middlesex, **T**HE sheriff was commanded, that he should take to wit. *Martha Lundie* late of *Westminster* in the county aforesaid, widow, if, &c. and safely, &c. so that he might have her body on this day, to wit, on the morrow of *All Souls*, to answer to *Robert Petre* in a plea, why with force and arms the close of him the said *Robert* at *Westminster* she broke, and other outrages, &c. to the great damage, &c. and against the peace, &c. and also in a certain plea of trespass on the case, on promise, to the damage of him the said *Robert* 30 *l.* And now here on this day comes *Joseph Somers* of *York-street* in *Covent-garden* in the county aforesaid, gent. and *Alice Arthur* of *St. James's-street* in the county aforesaid, spinster, in their proper persons, before *Peter King*, knight, and his companions, justices of the bench here, and have acknowledged, and each of them hath acknowledged, that they owe to the said *Robert* the sum of 30 *l.* which said sum of 30 *l.* the same *Joseph* and *Alice* for themselves and their heirs have consented and granted, and each of them for himself and herself, and for his and her heirs, hath consented and granted shall be made of their and each of their lands and chattels, and to the use and behoof of the same *Robert* levied: and also on the same

same day here comes the said *Martha* in her proper person before the same justices, and hath acknowledged, that she owes to the said *Robert* the sum of 60*l.* which said sum of 60*l.* the same *Martha* for herself and her heirs hath consented and granted shall be made of her lands and chattels, and to the use and behoof of the same *Robert* levied, on this condition; that if judgment shall happen in the same court here in the said plea of trespass on the case to be given for the said *Robert* against the said *Martha*, then the same *Martha* shall satisfy all the damage which shall be adjudged to the said *Robert* against the said *Martha* in the same court here in the said plea of trespass on the case, or shall render her body in execution of such judgment to the prison of the Fleet, &c.

Ford against Taylor and another.

Trin. 2 George. Roll 1814.

Middlesex, **T**HE sheriff is commanded: whereas *William Taylor* of the parish of *St. Margaret Westminster* in the county aforesaid, gent. and *John Bailey* of *Grainge-court, Lincolns-Inn Fields* in the county aforesaid, gent. on the first day of *May* in the first year of the reign of the lord the now king, came before *Robert Tracy*, esq; one of the justices of the said lord the king of the bench, at his chambers situate in *Serjeants-Inn* in *Fleet-street, London*, and acknowledged, and each of them for himself severally acknowledged, that they owed to *John Ford* the sum of 100*l.* to be levied on their and each of their lands and chattels; which said recognisance in form aforesaid taken, the same justice afterwards, to wit, on the 4th day of *May* in *Easter* term in the first year of the reign of the said lord the now king aforesaid, into the said court of the said lord the king of the bench aforesaid here, to wit, at *Westminster* in the county aforesaid, with his own proper hand delivered, in the same court of the said lord the now king on record to be inrolled, and there in the same *Easter* term before *Peter King*, knt. and his companions, justices of the same lord the king of the bench aforesaid, it is inrolled, as by the record thereof in the same court of the said lord the now king here, to wit, at *Westminster* aforesaid remaining manifestly appears; which said 100*l.* the said *William* and *John Bailey* have not yet paid, nor hath either of them paid to the same *John Ford*, as by the suggestion of the said *John Ford* the king had understood; and because, &c. that by good, &c. he give notice to the said *William* and *John Bailey* that they should be here on this day, to wit, from the day of the holy *Trinity* in 15 days, to shew if any thing, &c. to wit, to the same *William*, why the said 100*l.* by him in form aforesaid acknowledged of his lands and chattels, and to the said *John Bailey*, why the said 100*l.* by him in form aforesaid acknowledged of his lands and chattels ought not to be levied and paid to the said *John Ford*,

The entry of a *scire facias* on a recognisance on a writ of error in K. B. on a judgment in C. B. Salk. 564. 2. The condition.

Ford, according to the form of the recognisance aforesaid, if, &c. And now here on this day come as well the said *John Ford* by *W. G.* his attorney, as the said *William Taylor* and *John Bailey* by *T. S.* their attorney; and the sheriff now returns, that he by virtue of the writ aforesaid to him directed by *Edward Easton* and *S. Watson* good, &c. hath given notice to the said *William Taylor* and *John Bailey*, that they should be here on this day to shew in form aforesaid, &c. And the same *John Ford* prays execution against the said *William Taylor* and *John Bailey* for the debt and damages aforesaid, according to the form of the recognisance aforesaid, to be adjudged to him, &c.

Judgment by
default.

And the said *William Taylor* and *John Bailey* by *T. S.* their attorney come and defend the force and injury when, &c. and say nothing in bar of the *scire facias* of the said *John Ford* aforesaid, whereby the same *John Ford* remains against the said *William* and *John Bailey* therein undefended: therefore it is considered, that the said *John Ford* have execution against the said *William* and *John Bailey* for the debt and damages aforesaid, according to the form of the recognisance aforesaid by the default of them the said *William* and *John Bailey*, &c.

[521]
Imparllance.

The entry of the
recognisance of
bail in K. B. on
a bill of Middle-
sex.
Salk. 564.

AND the said *T. Brown* by *John Normansell* his attorney comes and defends the force and injury when, &c. and prays leave to imparl; and it is granted him, &c. Upon which day therefore is given to the parties aforesaid before the lord the king at *Westminster* until *Tuesday* next after three weeks of *St. Michael*, to wit, to the said *Thomas* to the bill aforesaid to imparl, and then to answer: and upon this come *Thomas Breton* of *Gray-friars, London*, merchant, and *Robert Breton* of *Mincing-lane, London*, merchant, in their proper persons, and have become pledges and bail, and each of them for himself hath become pledge and bail for the said *Thomas Browne*, that if the said *Thomas Browne* happens to be convicted in the plea aforesaid, then the same bail have granted, and each of them for himself hath granted, as well the debt aforesaid, as all such damages, costs and charges which to the said *John* may be in this behalf adjudged of their and each of their lands and chattels to be raised, and to the use and behoof of the said *John* levied, if the same *Thomas Browne* should happen not to pay the said debt, and those damages, costs and charges, or not render himself to the prison of the marshal of the *Marshalsea* of the lord the king before the king himself on that account.

Lloyd against Campbell.

The entry of a
scire facias on a
recognisance of
bail in debt in
C. B.

Great Britain, THE lady the queen hath sent to the sheriff to wit. of *Middlesex* her writ close in these words, to wit, *Anne* by the grace of God, of *Great Britain, France* and *Ireland* queen, defender of the faith, &c. To the sheriff of *Middlesex*, greeting: whereas, *Thomas Lloyd*, esq; hath lately in

in our court before *Thomas Trevor*, knt. and his companions, our justices of the bench, by our writ and by the judgment of the same court recovered against *Colen Campbell* late of *London*, merchant, otherwise called *Colen Campbell* late of *Newfoundland*, merchant, now in *London*, 120*l.* debt, and 12*l.* 10*s.* for his damages which he sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Colen* is convicted, as by the inspection of the record and proceedings thereof, which we lately for certain causes of error caused to be brought into our court before us, appears to us on record: and whereas *David Hamilton* late of *Droogate-hill*, *London*, merchant, and *James Campbell* late of *Fann-court* in *Fenchurch-street*, *London*, bookseller, lately in our court of the bench aforesaid, to wit, in *Michaelmas* term in the 4th year of our reign before the said *Thomas Trevor*, knt. and his companions, our justices of the bench aforesaid, at *Westminster* have acknowledged, and each of them hath acknowledged, that they owe to *Thomas Lloyd* the sum of 240*l.* which said sum of 240*l.* the same *Alexander* and *James* for themselves and their heirs have consented and granted, and each of them hath consented and granted, to be raised of their and each of their lands and chattels, and to the use and behoof of the same *Thomas* levied, upon this condition, that if judgment should happen to be given for the said *Thomas Lloyd* against the said *Colen Campbell* in the said plea of debt on the demand of 120*l.* by the said *Thomas Lloyd* against the said *Colen Campbell* in our same court of the bench prosecuted, then the same *Colen* the said debt of 120*l.* and likewise all the damages which to the same *Thomas Lloyd*, by reason of the detention of that debt in our same court of the bench should be adjudged, should satisfy, or his body in execution of such judgment to the prison of the *Fleet* should render: and whereon in our same court of the bench aforesaid, before the said *Thomas Trevor*, knt. and his companions, our justices at *Westminster*, it hath been considered by the same court, that the said *Thomas Lloyd* should have execution against the said *Alexander* and *James* of the said several sums of 240*l.* of their and each of their lands and chattels' respectively to be levied, according to the form and effect of the recognisance aforesaid, as by the inspection of the record and proceedings, as well in the rendition of the judgment aforesaid, as in the adjudication of the execution of the same judgment into our said court before us at *Westminster* in order to correct error transmitted, and in our same court before us now remaining, appears to us on record: and now on the part of the said *T. L.* we have understood, that judgment is given against the said *Colen Campbell* for the debt and damages aforesaid, and also execution is adjudged for the said *Thomas* against the said *Alexander Hamilton* and *James*, the bail aforesaid of the said *Colen*, of the said several sums of 240*l.* Execution nevertheless of the several judgments aforesaid to the said *Thomas* yet remains to be made;

The recovery.

Error.

The recognisance.

Judgment on the recognisance

Error.

[522]

*Scire facias.**Nisbil returned.**An alias awarded.**Nisbil returned.**Judgment.*

made; wherefore the same *Thomas Lloyd* hath besought us to grant him his proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *Colen* that he be before us from the day of the holy *Trinity* in three weeks, wheresoever we shall then be in *Great Britain*, to shew if he hath or can say any thing for himself, why the said *Thomas* ought not to have his execution against him of the debt and damages aforesaid, according to the force, form and effect of the recovery of the judgment aforesaid, and also in form aforesaid give notice to the said *Alexander* and *James*, the bail aforesaid, that they be before us on the same day and place, to shew if they have or can say any thing for themselves, why the said *Thomas* ought not to have his execution against them of the several sums of 240 *l.* according to the force, form and effect of the recognisance, and the adjudication of execution aforesaid, if they shall think fit; and farther to do and receive what our same court before us shall consider concerning them in this behalf; and have there the names of those by whom you shall give them notice, and this writ. Witness *J. Holt*, knt. at *Westminster* 13th day of *June* in the 6th year of our reign: on which day before the lady the queen at *Westminster* comes the said *Thomas Lloyd* in his proper person; and the sheriff of *Middlesex*, to wit, *William Benson*, knt. and *Ambrose Crawley*, knt. returns, that the said *Colen*, *Alexander* and *James* have nothing, nor hath any of them any thing in his bailiwick whereby he can give them or any of them notice, neither are they, nor is any of them, found in the same: and the said *Colen*, *Alexander* and *James* have not come, nor hath any of them come: therefore as before the sheriff of the county of *Middlesex* is commanded, that by good and lawful men of his bailiwick he give notice to the said *Colen*, *Alexander* and *James*, that they be before the said lady the queen from the day of *St. Michael* in three weeks, wheresoever, &c. to shew in form aforesaid, if, &c. and farther, &c. The same day is given to the said *Thomas*, &c. On which day before the said lady the queen at *Westminster* comes the said *Thomas* in his proper person; and the said sheriff of the county of *Middlesex* aforesaid as before returns, that the said *Colen*, *Alexander* and *James* have nothing, nor hath any of them any thing in his bailiwick whereby he can give notice to them, or any of them, neither are they found, nor is any of them found in the same; and the said *Colen*, *Alexander* and *James* have not come, nor hath any of them come, but have made default: therefore it is considered, that the said *Thomas* have his execution against the said *Colen* for the debt and damages aforesaid, according to the force, form and effect of the recovery aforesaid, by the default of him the said *Colen*: it is also considered, that the said *Thomas* have his execution against the said *Alexander* and *James* of the said

said several sums of 240*l.* and 240*l.* in form aforesaid respectively acknowledged of their lands and chattels respectively to be levied, by the default of them the said *Alexander* and *James*, &c.

Rules.

J. THE 9th day of *July*, on the oath of *G. N.* it is ordered, that the defendant do on *Monday* on the octave of the holy *Trinity*, on notice of this rule to him or his attorney given, shew cause to the court here, why the curfitor of *London* should not amend the original writ filed with the *custos brevium* of this court, by adding the name of one of the plaintiffs omitted in that writ, on payment of costs to the defendant or his attorney, upon the writ of error to this day, by the prothonotary *George Cooke*, knt. to be taxed, if the defendant shall not farther proceed in that writ, and why the plaintiff should not proceed to enter a *nonpros*, or to affirm the judgment in the king's bench without payment of costs to the plaintiff by the defendant in that behalf.

[523]

Rule to amend the original on a writ of error brought.

Clitheroe against *Francklyn*.

Trin. 11 *W.* 3.

J. THE 23d of *June*, on the oath of *Joseph Hope*, gent. and upon hearing *Robert Wareing*, now one of the attornies of this court, and late clerk in court on the part of the demandant now deceased; whereby it sufficiently appears to the court here that the verdict was given for the tenant, and judgment thereon was signed, but the *possea* with the writ of *habeas corpora juratorum*, and the panel thereto annexed, hath by misfortune been lost: it is ordered, that the like record shall be engrossed, and that a *habeas corpora* be made anew and returned, and a verdict on the *possea* be returned by the associate of the lord chief justice of this court, and that judgment be thereon entred according to the said verdict.

Rule to make a new nisi prius record, &c. the original being lost. *Pract. Reg.* 57. 69.

By the court. Treasury.

King, who as well, &c. against *Bolton* and others.

Friday next after the octave of *St. Hilary* 5 *Geo.*

UPON reading the oaths of *John P.* and *William W.* it is ordered, that the defendant in error have leave to make a new roll of the proceedings and judgment in this cause in lieu of the

Rule to make a new roll of all the proceedings, the original being lost.

the roll of this court lately thereof made, which by misfortune (as it appears to the court) is lost, and that such roll so to be made anew be filed on record in the court here, by the direction and inspection of Mr. *Clarke*: on the motion of Sir *Edward Northey*.

By the court.

[524]

Grindall against Leighton.

Tuesday next after the morrow of *All Souls*, 6 *Ann.*

Rule to amend errors assigned.

IT is ordered, that the plaintiff in the writ of error have leave to amend the errors assigned within ten days next ensuing: on the motion of Mr. *Eyre*.

By the court.

Thornby against Fleetwood.

Tuesday next after the morrow of *All Souls*, 7 *Geo.*

Rule to expedite the determination of a cause where the court are divided.

THE court being divided in opinion, with the assent and at the instance of the most noble dutchefs of *Hamilton*, being the lessor of the plaintiff in error, to expedite the determination of this cause in the house of lords, it is ordered, that the judgment be affirmed: on the motion of Mr. *Strange*.

By the court.

For fuller information herein, see the statute 4 *Ann.* c. 16. for amendment of the law;

And the statute 5 *Geo.* 1. c. 13. for amendment of writs of error, and for the farther preventing the arresting and reversing of judgments after verdict.

Warrant of Attorney.

[525]

Warrant of attorney by the university of *Oxford* to claim the cognisance of all pleas, &c. 1 *Show.* 352.

THE chancellor, masters and scholars of the university of *Oxford*, to all christian people to whom this present writing shall come, greeting: know ye, that we the said chancellor, masters and scholars, have made, ordained and constituted, and in our place put, and by these our present letters do make, ordain and constitute, and in our place put our beloved in Christ *John Lilly* and *William Whitehead*, gent. and each of them, our true and lawful attornies, deputies, agents and factors, jointly and severally for us, and in our name and stead, to demand, challenge, prosecute and defend all and singular our liberties and privileges, and especially to claim and prosecute to have the cognisance

nifance as well of a certain plea of trespass in the court of the lord and lady the now king and queen of *England, &c.* depending between one *Peter Parker*, plaintiff, and *Jonathan Edwards*, professor of divinity, and *William Sherwin*, beadle, defendants; which said defendants are privileged persons of the said university, to wit, the said *Jonathan Edwards*, principal of *Jesus College*, in the university of *Oxon*, and *William Sherwin*, beadle of the university of *Oxon*, as of all and singular pleas, actions and causes whatsoever, (felony, maihem and assises, and pleas of freehold, only excepted) where a scholar or other person of the said university is one of the parties in the court of the said university, before him the said chancellor or his deputy to be held; and also to claim, demand, prosecute and defend, all and all manner of liberties and privileges for any person whatever rightfully and lawfully privileged. In witness whereof we have caused the seal of the office of chancellorship of the said university of *Oxford* to be put to these presents. Dated the 24th day of the month of *May* in the year of the Lord 1692.

Nich. Villet, Dep. Reg.

Salop, **R**OBERT *Beachcroft*, esq; sheriff of the county to wit. of *Salop* aforesaid, according to the form of the statute in such case made and provided, puts in his place *John Allen*, to receive, open, break, return and execute all writs and precepts to him directed and to be directed, and before the lady the queen returnable or to be returned.

Warrant of attorney by a sheriff.
23 H. 6. c. 10.

Middlesex, **T**H E sheriff of *Middlesex* was commanded: to wit. whereas *Thomas B.* late of *P.* in the county of *Chester*, yeoman, *Robert S.* late of the same, yeoman, and *John H.* late of the same, yeoman; lately, to wit, on the 28th day of *February* in the second year of the reign of the lady the now queen, before *Peter W.* esq; a commissioner by the justices of the said lady the queen of the bench here constituted, according to the form of the statute in such case made and provided, became bail, and each of them became bail for *William M.* late of *London*, esq; otherwise called *William M.* of *P.* in the county of *Chester*, esq; in the sum of 600 *l.* that the said *William* should appear in the said court of the bench, to a certain original writ by one *Matthew C.* against him the said *William* in a certain plea of debt on a demand of 600 *l.* before the end of two terms then next ensuing to be sued out, and to answer to the same *Matthew* in the same plea; and also if judgment should happen to be given in the same plea for the said *Matthew C.* against the said *William*, that then the said *William* should render his body in execution of the judgment aforesaid in the said court here, or should pay the said *Matthew* the debt and the damages to him in the same plea to be adjudged; which said sum the said *Thomas*, *Robert* and *John* severally acknowledged, and every of them by himself severally acknowledged, of their lands and chattels to be

[526]

The entry of a judgment on a *scire facias* in C. B. against the bail to a new original on the reversal of an outlawry.
31 El. c. 3. § 3.
4 & 5 W. & M. c. 4.

made, and to the use and behoof of the said *Matthew* levied, if the said *William* should happen to make default in any of the premises, and be thereof lawfully convicted, for which said debt of 600 *l.* the said *William* at the suit of the said *Matthew* was outlawed in the same court of the bench, and the same outlawry is now reversed and annulled; which said recognisance the said *Peter W.* hath duly transmitted to *Thomas Trevor*, *knt.* and his companions, then justices of the bench aforesaid, to be inrolled, and before them in the court aforesaid it is inrolled, as by the record and proceedings thereof in the same court of the bench here remaining manifestly appears: and altho' the said *Matthew* afterwards, to wit, in *Trinity* term in the 4th year of the reign of the said lady the queen, did recover against the said *William* the said 600 *l.* the debt aforesaid, and also 16 *l.* for his damages by reason of the detention of that debt, as it likewise appears on record: nevertheless the said *William* his body in execution of the judgment aforesaid in the same court before the said justices of the said lady the queen of the bench aforesaid hath not rendered, nor hath the said *William* paid the said *Matthew* the debt and the damages aforesaid, as by the suggestion of him the said *Matthew* we have understood; and because, &c. that by good, &c. he should give notice to the said *Thomas B. Robert* and *John*, that they be before the justices of the said lady the queen here on this day, to wit, from the day of *Easter* in 15 days, to shew if any thing, &c. why the said 600 *l.* by them in form aforesaid acknowledged should not be made of their lands and chattels, and paid to the said *Matthew*, according to the force, form and effect of the recognisance aforesaid, if, &c. And now here on this day comes the said *Matthew* by *J. L.* his attorney; and the sheriff, to wit, *Charles P. knt.* and *Benjamin G. knt.* now returns, that the said *Thomas*, *Robert* and *John* have nothing, nor hath any of them any thing, &c. neither are they, nor is any of them found, &c. And upon this the said *Matthew* prays execution against the said *Thomas B. Robert S.* and *John H.* of the said 600 *l.* by them in form aforesaid severally acknowledged, of their lands and chattels to be made, according to the form and effect of the recognisance aforesaid, to be adjudged to him, &c. And the said *Thomas*, *Robert* and *John*, altho' on the fourth day of plea solemnly called, do not come, nor doth any of them come: therefore it is considered, that the said *Matthew C.* have execution against the said *Thomas*, *Robert* and *John*, to wit, against the said *Thomas* of the said 600 *l.* by him in form aforesaid acknowledged, and against the said *Robert* of the said 600 *l.* by him in form aforesaid acknowledged, and against the said *John* of the said 600 *l.* by him in form aforesaid acknowledged, by the default of them them the said *Thomas*, *Robert* and *John*, &c.

By Michaelmas record in the 4th year of the reign of king George.

Stafford, I T is found elsewhere in the memorandums of this to wit. exchequer of the 4th year of the reign of the now lord king *George*, to wit, among the common rolls of this *Michaelmas* term, on the part of the remembrancer of this court, in these words, to wit, *Stafford*, to wit, be it remembred, that *Roderick Lloyd*, the clerk of the outlawries, present here in court on the 23d day of *October* in this term, hath delivered here into court the transcript of a certain writ of outlawry against *Edward Whittakers* and *Isaac Whittakers* pronounced, and of the inquisition thereon taken to make farther execution thereon for the said lord the king, the tenor of which said transcript follows in these words, to wit, *George* by the grace of God, of *Great Britain, France and Ireland* king, defender of the faith, &c. To the sheriff of *Stafford*, greeting: we command you, that you do not omit on account of any liberty of your county, but by the oath of good and lawful men of your county you diligently inquire what goods and chattels, lands and tenements *Edward Whittakers* late of *London*, yeoman, otherwise called *Edward Whittakers* of *Old Road* in the county of *Chester* aforesaid, yeoman, (father of the said *John*) and *Isaac Whittakers* late of *London*, yeoman, otherwise called *Isaac Whittakers* of *Woolverhampton* in the county of *Stafford*, ironmonger, have or had in your bailiwick on *Monday* next before the feast of the conversion of *St. Paul* in the 2d year of our reign, or ever after, on which day they were outlawed in *London* at the suit of *John Fox* in a plea of debt, as our sheriffs of *London* to our justices at *Westminster* on a certain day now past have returned, and those by their oath you cause to be extended and appraised, according to the true value of the same, and them which by that inquisition you shall find into our hands take and safely cause to be kept, so that of the true value and the issues of the same you may answer to us; and they being so extended and appraised, what you shall do therein make known to our justices at *Westminster* from the day of *St. Michael* in three weeks distinctly and openly under your seal and the seals of those by whose oath you shall make that extent and appraisement: and because the same *Edward* and *Isaac* outlawed run up and down and secrete themselves in your county, in contempt of us, and to the prejudice of our crown, as we have understood, we command you, that you take the said *Edward* and *Isaac* wheresoever they shall happen to be found in your bailiwick, as well within liberties as without, and them safely keep, so that you may have their bodies before our justices at *Westminster* at the said time to do and receive what our court shall consider concerning them in this behalf; and have there this writ. Witness *P. King*, knt. at *Westminster*, 20th day of *June* in the second year of our reign. *Whishaw B.* (21) *Northey*.

The pleading of a mortgage in bar to an outlawry.

The within named *Edward Whittakers* is not found in my bailiwick, the residue of the execution of this writ appears in a certain schedule to this writ annexed. *Thomas Birch*, esq; sheriff. *Stafford*, to wit, an inquisition indented taken at *Newcastle under Line* in the county aforesaid on the 10th day of *October* in the 3d year of the reign of our lord *George*, now king of *Great Britain, &c.* before me *Thomas Birch*, esq; sheriff of the same county, by virtue of the writ of the said lord the king to me directed, and to this inquisition annexed, by the oath of *John Aspinall*, *Henry Robinson*, *Thomas Hollins*, *Richard Beath*, *Thomas Williamson*, *Ralph Adams*, *John C. John T. Edward H. John P. George T.* and *John L.* good and lawful men of my bailiwick, who being sworn and charged, on their oath say, that *Edward W.* in the writ aforesaid named, on *Monday* next before the feast of the conversion of *St. Paul* in the second year of the reign of the said lord the king, on which day he was outlawed in *London* at the suit of *John F.* in a plea of debt, was seised in his demesne as of freehold, and yet is seised for the term of his life of and in one messuage with the appurtenances, and 13 closes or parcels of land to the same messuage belonging, containing by estimation 40 acres of land more or less, situate, lying and being in *Gratton* in the county of *Stafford* aforesaid, of the clear yearly value in all issues, besides reprises, 10*l.* now or late in the tenure of *Mary Stretch*, the wife of *Samuel Stretch*; and that the said *Edward Whittakers* is yet surviving and in full life: all and singular which said premisses with the appurtenances above specified, I the said sheriff on the said day of the caption of this inquisition into the hands of the said lord the now king have taken and caused to be seised, as by that writ I am commanded: and the jurors aforesaid farther on their oath say, that the said *E. Whittakers* hath no goods or chattels, nor other or more lands and tenements in my bailiwick at the time of the outlawry aforesaid, or ever after, to the knowledge of the jurors aforesaid. In witness whereof to one part of this inquisition remaining with the said jurors, I the said sheriff have put my seal, and to the other part of the same as well I the said sheriff as the jurors aforesaid have severally put our seals, the day and year first aforesaid. *Thomas Birch*, esq; sheriff. Examined by me *Roderick Lloyd*, clerk of the outlawries, 23d day of *October* in the 4th year of the reign of the lord *George*, now king of *Great Britain, &c.* and in the year of the Lord 1717, as it is there contained.

[528]

And now, to wit, on the 28th day of *November* in this term comes here one *S. T.* of *Odd Road* in the county of *Chester*, gent. the tertenant of the said one messuage with the appurtenances, and 13 closes or parcels of land to the same messuage belonging, containing by estimation 40 acres of land more or less, situate, lying and being in *Gratton* in the county of *Stafford*, and other premisses in the inquisition aforesaid specified, and into the hands of the said lord the king taken and seized by *Gabriel Armiger*

Armiger his attorney; and prays *oyer* of the said transcript of the writ of outlawry aforesaid, and of the inquisition aforesaid; and to him they are read: which being read and heard, and by him understood, he complains that he is by colour of the premisses greatly troubled and molested, and the said messuage, lands, tenements and other the premisses above in this plea mentioned, parcel, &c. into the hands of the said lord the king, by colour of the premisses, by the said sheriff taken and seized; and this unjustly, because by protesting, that the transcript of the writ of outlawry aforesaid, and the inquisition aforesaid, and the matter in the same contained, are insufficient in law, to which he hath no necessity, nor is by the law of the land obliged in any manner to answer: for plea nevertheless the said *S. T.* says, that long before the day in the writ aforesaid mentioned of the caption of the inquisition aforesaid, and also long before the pronouncing of the outlawry aforesaid, to wit, on the 10th day of *January* in the 33d year of the reign of *Charles* the Second, late king of *England*, one *T. B.* of *Moreton* in the county of *Chester* aforesaid, bart. was seised in his demesne as of fee, among others, of and in the said premisses above in this plea mentioned, parcel, &c. and so being thereof seised, afterwards, to wit, on the same 10th day of *January* in the 33d year aforesaid, for and in consideration of 80*l.* of lawful money of *England* to the said *T. B.* by one *T. S.* in hand paid, and for other considerations in the same indenture mentioned, he the said *T. B.* at the parish of *Gratton* in the county of *Stafford* aforesaid, by his certain indenture between him the said *T. B.* by the name of *T. B.* of *M.* in the county of *Chester*, bart. on the one part, and the said *T. S.* by the name of *T. S.* of *Gratton* in the parish of *H.* in the county of *Stafford*, yeoman, of the other part, (one part of which indenture sealed with the seal of the said *T. B.* and here in court now produced, the date whereof is the day and year last mentioned) did demise and grant to the said *T. S.* the premisses aforesaid above in this plea before mentioned, parcel, &c. (among other) by the name of all that his third part of the messuage, house, closes, crofts, orchards, hemp-butts and barns, situate, lying and being in *G.* in the parish of *H.* in the county of *Stafford* aforesaid, with all his third part of all other edifices, buildings, barns, stables, and other out-houses whatsoever to the said messuage belonging, with ail and singular the several parcels of land, closes, pastures and meadows in the same indenture specified and described, to wit, in *Russey Croft* 10 butts, in *New Close* upon *Whiston* 11 butts, in the said close upon *Churchway Hatt* two butts, in the said close upon *Vigans Lands* two butts, and in the said close upon *Boughland Flatt* 3 butts, and also in *Townfield* upon *Longland Flatt* 7 butts, and also 3 closes of pasture or parcels of land, commonly called or known by the name of *The Flatts*, with one half day's mowing in *Dole Meadow*, and one half day's mowing in *Flax Meadow*, all the said closes, pastures or parcels of land, containing by estimation 13

aeres and three quarters of an acre, situate, lying and being in *Gratton* aforesaid in the parish of *H.* and county of *Stafford* aforesaid, and then or late in the possession or occupation of the said *T. S.* or his assigns; to have and to hold all the said messuages, houses, closes, crofts, orchards, hemp-butts and edifices, buildings, barns, stables and other out-houses whatsoever, with the said several parcels of land with their appurtenances, from the day of the date of the same indenture for the term of the natural life of the said *T. S.* and *R. S.* the son of *G. S.* of *Newbold Ashbury* in the county of *Chester*, yeoman, and *E. A.* the son of *E. A.* of *Odd Road* in the county of *Chester* aforesaid: by virtue of which said premises the said *T. S.* at *G.* aforesaid in the county of *S.* aforesaid entred, and was seised in his demesne as of freehold (among other) of and in the said messuage, lands, tenements, and all and singular the other premises above in this plea before mentioned, parcel, &c. and so being thereof seised, long before the pronouncing of the outlawry aforesaid, afterwards, to wit, on the 12th day of *May* in the 36th year of the reign of *Charles* the Second, late king of *England*, the said *T. S.* in his life-time, at the parish of *Gratton* aforesaid in the county of *Stafford* aforesaid, made his last will and testament in writing, and thereby devised to the said *Edward Whittakers* and his assigns the premises aforesaid above in this plea before mentioned, parcel, &c. (among others) by the name of all that his messuage with all his lands and tenements thereto belonging, lying and being in *G.* aforesaid in the manor of *H.* in the county of *Stafford* aforesaid, during the term of the natural life of the said *Edward A.* the son of *Edward A.* of *Odd Road* in the county of *Chester* aforesaid, yeoman, and of *Ralph S.* son of *George S.* of *Newbold A.* in the county of *Chester* aforesaid, or either of them; which will, sealed with the seal of the said *Thomas S.* is here in court now produced, the date whereof is the day and year last mentioned; and afterwards, to wit, the same day and year, he the same *Thomas S.* at *G.* aforesaid in the county of *Stafford* aforesaid died; after whose death, and by virtue of which said premises, the said *Edward W.* entered, and was seised in his demesne as of freehold (among other) of and in the said messuage, lands, tenements, and all and singular other the premises above in this plea before mentioned, parcel, &c. and so being thereof seised, long before the day in the writ aforesaid mentioned, or the caption of the inquisition aforesaid, and also long before the pronouncing of the outlawry aforesaid, afterwards, to wit, on the fourth day of *May* in the 12th year of the reign of the lady *Anne*, late queen of *Great Britain*, for and in consideration of 267*l.* 5*s.* of lawful money of *Great Britain* to the said *Edward W.* in hand paid by the said *Samuel T.* he the same *Edward W.* at the parish of *G.* aforesaid in the county of *Stafford* aforesaid, by his certain indenture between the said *Edward W.* by the name of *Edward W.* of *Odd Road* in the county of *Chester*, gent. of the one part, and the said *Samuel T.* by

[529]

by the name of *Samuel T.* of *Odd Road*, gent. of the other party which said indenture sealed with the seal of the said *T. W.* is here in court now produced, the date whereof is the day and year last mentioned, granted, bargained and sold to the same *Samuel T.* his executors, administrators and assigns, all and singular the messuages, lands and premises with the appurtenances, and all the estate, right, title, interest, claim and demand whatsoever of him the said *Edward W.* of, in and to the premises aforesaid; to have and to hold to the said *Samuel T.* his executors, administrators and assigns, from the 25th day of *March* next ensuing for and during the term of 99 years, if the said *Edward W.* should so long live: by virtue of which said premises, he the same *Samuel T.* afterwards, to wit, on the same 25th day of *March* in the year aforesaid, at the parish of *G.* aforesaid in the county of *Stafford* aforesaid entered, and was thereof possessed of and in the said messuages, lands, tenements, and all and singular the other premises above in this plea before mentioned, parcel, &c. for the term aforesaid, according to the form and effect of the indenture aforesaid; and being thereof so possessed, until the same premises by the sheriff into the hands of the said lord the king by colour of the writ aforesaid, and the inquisition aforesaid, were taken and seized: which all and singular the same *Samuel T.* is ready to verify, as the court, &c. with this, that the term aforesaid is yet in being and subsists, and that the premises aforesaid in the inquisition aforesaid mentioned, and the premises aforesaid in the said several indentures, and the last will aforesaid in this plea above before mentioned, parcel, &c. are one and the same, and not other nor different: wherefore he prays judgment, and that the hands of the said lord the king from the possession of the premises aforesaid in the inquisition aforesaid mentioned may be removed, and that he the said *Samuel T.* to his possession thereof, together with the issues and profits thereof, whereof the said lord the now king is not yet answer'd, may be restored; and that as well the said *Thomas B.* esq; late sheriff of the county of *Stafford* aforesaid, as all others from thence, now and who hereafter shall be sheriffs of the county of *Stafford* aforesaid, from the issues and profits of the same premises in their accounts against the said lord the now king, his heirs and successors, may be discharged, and every of them may be discharged; and that he the said *Samuel T.* as to the premises from this court may be dismissed, &c.

Borrett,

Mich II Ann.

Surrey, THOMAS A. late of the parish of *St. Andrew* to wit. *Holborn* in the county of *Middlesex*, merchant and *Jane* his wife, *Alexander M.* late of the same in the county of *Middlesex*, gent. and *Eleanor* his wife, and *Elizabeth B.* late of

Debt against the heir and devisee by an executor.
3, 4 W. & M. c. 14.

U 4

Guildford

[530]

Guildford in the county of *Surrey*, widow; which said *Jane*, *Eleanor* and *Elizabeth*, and one *Anne C.* now deceased, whom the said *Jane*, *Eleanor* and *Elizabeth* survived, were the daughters and coheiresses of *Christopher C.* otherwise lately called *Christopher C.* of *Crawley* in the county of *Surrey*, gent. and devises of sundry lands and tenements of which the said *Christopher* died seised in his demesne as of fee, *Richard B.* late of in the county of *Suffex*, *Thomas B.* late of in the county of *Suffex*, yeoman, and *John M.* late of *Crawley* in the county of *Suffex*, yeoman, surviving devisees of the manor and sundry other lands and tenements of which the said *Christopher* died seised, by the said *Christopher* by his will devised to the same *R. B. Thomas B.* and *John M.* and to one *Richard H.* late of *Hafcombe* in the county of *Surrey*, and now deceased, whom the said *Richard B. Thomas* and *John* survived, were summoned to answer *Henry T.* executor of the will of *John H.* in a plea that they render to him 60*l.* which they unjustly detain from him, &c. And whereon the same *Henry* by *John C.* his attorney says, that whereas the said *Christopher*, the father of them the said *Jane*, *Eleanor*, *Anne* and *Elizabeth*, whose surviving heirs and devisees they the said *Jane*, *Eleanor* and *Elizabeth* are in the life-time of him the said *Christopher*, to wit, on the 29th day of *September* in the 4th year of the reign of the lord *James* the Second, late king of *England*, &c. at *Guildford* in the county of *Surrey*, by his certain writing obligatory acknowledged himself to be bound to the said *John H.* in his life-time in the said 60*l.* to be paid to him when he should be thereto required, and to the same payment well and truly to be made, the said *Christopher* in his life-time bound himself and his heirs by the same writing; and whereas the said *Christopher* in his life-time was seised in his demesne as of fee of and in the manor and several tenements and premisses with the appurtenances in the said county of *Surrey* hereafter mentioned to be particularly devised; and being so thereof seised, the same *Christopher* after the 25th day of *March* in the year of the Lord 1692, to wit, on the 11th day of *January* in the year of the Lord 1694 at *Guildford* aforesaid made his will in writing, and by his same will gave and devised to the said *Richard H.* now deceased, *Richard B. Thomas B.* and *John M.* and their heirs, the manor, messuage or tenement, farm, lands, meadows, pastures, feedings, woods, rents, tenements and hereditaments whatsoever with the appurtenances, called or known by the name of *Woodham*, situate within the parish of *Cherissey* in the said county of *Surrey* aforesaid, and by his said will gave and devised to the said *Richard H. Richard B. Thomas B.* and *John M.* and their heirs, one messuage and sundry lands with the appurtenances, known by the name of *Stubbs*, parcel of *New-Park* in *Crawley*, in the county of *Surrey* aforesaid; and also by his said will gave and devised to the said *Eleanor*, *Elizabeth*, *Anne* and *Jane*, their heirs and assigns, one messuage, and sundry lands and hereditaments called *New-park* in *Crawley* aforesaid; and

and afterwards, to wit, on the first day of *March* in the year of the Lord 1694 abovesaid, at *Guildford* abovesaid died, of such his estate of and in the manor, messuages, lands and tenements abovesaid with the appurtenances so as abovesaid respectively devised seised; after whose death, and before the day of the issuing of the original writ of him the said *Henry*, to wit, the same day and year last mentioned, at *Guildford* abovesaid, the said *Jane*, *Eleanor*, *Anne* and *Elizabeth*, *Richard H.* *Richard B.* *Thomas B.* and *John M.* to their legacies abovesaid to them so as abovesaid respectively devised agreed, and were respectively seised of the manor, messuages, lands and tenements abovesaid, to them so as abovesaid devised, by virtue of the several devises abovesaid: nevertheless the said *Christopher* in his life-time, or the said *Jane*, *Eleanor*, *Anne* and *Elizabeth*, in the life-time of the said *Anne*, or the said *Richard H.* *Richard B.* *Thomas* and *John M.* in the life-time of the said *Richard H.* or the said *Jane*, *Eleanor*, *Elizabeth*, *Richard B.* *Thomas* and *John M.* after the several deaths of the said *Christopher*, *Anne* and *Richard H.* altho' often required, the said 60*l.* to the said *John H.* in his life-time, or to the same *Henry* after his death, have not paid, nor hath any of them paid, but the same to the said *John H.* in his life-time, and to the said *Henry* after his death, have altogether refused to pay, and the said *Jane*, *Eleanor*, *Elizabeth*, *Richard B.* *Thomas* and *John M.* after the several deaths of the said *Christopher*, *Anne* and *Richard H.* the said 60*l.* to the same *Henry* after the death of the said *John H.* have hitherto altogether refused, and yet do refuse to pay, and the same unjustly detain, whereby he says that he is prejudiced, and hath damage to the value of 20*l.* And therefore he produces the suit, &c. And the same *Henry* produces here in court as well the writing abovesaid, which the debt abovesaid in form abovesaid testifies, the date whereof is the said as the letters testamentary of the said *John H.* abovesaid; whereby it sufficiently appears to the court here, that he the said *Henry* is executor of the will of the said *John H.* abovesaid, and thereof hath the administration, &c.

Select Writs.

To admit a Clerk.

A writ to the bishop to remove the present clerk, and to admit the clerk of the plaintiffs in the *quare impedit*.

WILLIAM, &c. To the reverend father in Christ, *Jeanathan* bishop of *Exeter*, greeting: whereas *T. Freake*, esq; *E. Cooke* and *C. D'Oyly*, gent. have lately in our court before *T. Rokeby*, knt. one of our justices assigned to hold pleas in our court before us, our justice assigned to take assises in the county of *Devon* by our writ of *quare impedit*, and by the consideration of the same justice of assise, recovered against *T. H.* clerk, their presentation to the vicarage of the church of *B.* in our county of *Devon* and your diocese, which became vacant and belonged to their presentation; and that the said *T. F. &c.* and should have our writ to you the said bishop, the ordinary of that place, to be directed, that notwithstanding your reclaim, or the reclaim of the said *T. H.* altho' the same *T. H.* to the vicarage of the church aforesaid is admitted, instituted and inducted, the same *T. H.* from the vicarage of that church you should remove, and to the vicarage of that church, on the presentation of the said *T. F. &c.* a proper person you should admit, whereof the same *T. H.* is convicted, as by the inspection of the record and proceedings thereof, which for certain causes of error we have caused to be brought into our court before us, appears to us on record: and whereof in our same court before us at *Westminster* it is considered, that the said *T. F. &c.* should have their execution against the said *T. H.* according to the form and effect of the recovery aforesaid, by the default of him the said *T. H.* as appears, likewise to us on record: we therefore command you, that notwithstanding your reclaim, or the reclaim of the said *T. H.* altho' the same *T. H.* to the vicarage of the church aforesaid is admitted, instituted and inducted, him the said *T. H.* from the vicarage of that church you do remove, and a proper person to the vicarage of that church, on the presentation of the said *T. F. &c.* you do admit; and how you shall have executed this our writ certify to us from the day of wherefover we shall then be in *England*; and have there this writ. Witnesses *John Holt*, knt. &c.

A writ to the bishop after judgment affirmed to admit a clerk to inquire if the prebend be void or not, and the yearly value of

WILLIAM the Third, &c. To the reverend father in Christ *Thomas* bishop of *Litchfield* and *Coventry* greeting: know ye, that we in our court before us, by the consideration of the same court, have recovered our presentation against you and *Thomas Atterbury*, clerk, to the prebend of *Totnefs* in the collegiate church of *St. Peter*, being vacant and belonging to our donation,

donation, whereof we brought our writ of *quare impedit* in our same court against you and the said *Thomas Atterbury*, as by the inspection of the record and proceedings thereof, which we lately for certain reasons of error caused to be brought into our said court before us, appears to us on record; and whereon in our same court before us it is considered, that we may have against you and the said *Thomas Atterbury* execution: but because it is not known whether the canonship and prebend aforesaid be full or not, how much that canonship and prebend is worth by the year, according to the true value of the same, we command you, that by the oath of good and lawful men of your county you diligently inquire whether the canonship and prebend aforesaid be full or not, how much that canonship and prebend is worth by the year, according to the true value of the same, and the inquisition which you shall thereof make certify from the day of wheresoever, &c. And therefore we command you, that notwithstanding the reclaim of you and the said *T. A.* on our presentation, you admit a proper person to the prebend aforesaid. Witnesses, &c.

Attachment.

[532]

WILLIAM, &c. To the sheriffs of the city of *Bristol*, greeting, we command you, that you attach *William P.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on day next after to answer to *Richard R.* gent. being one of the clerks of *Rowland Holt* and *Edward Ventriss*, our chief clerk of the pleas in our court before us, according to the liberty and privilege for such chief clerk and his clerks for time immemorial used and approved in the same in a plea of trespass; and have there then this writ. Witnesses *J. Holt*, knt. at *Westminster* 12th day of *February* in the 11th year of our reign.

Attachment of privilege for a clerk of the court of K. B. Pract. Reg. 120, 129.

ANNE, &c. To the sheriff of *Northampton*, greeting: we command you, that you attach *William* and *Richard* if they shall be found in your bailiwick, and them safely keep, so that you may have their bodies before us at *Westminster* on day next after to answer to *Robert R.* gent. being one of the attornies of our court before us, according to the liberty and privilege for such attornies and other ministers of the same court for time out of mind used and approved in the same in a plea of trespass; and have there then this writ. Witness *J. Holt*, knt. &c.

The like for an attorney of the K. B.

Audita querela.

Audita querela
on the new sta-
tute concern-
ing bankrupts.
Plaintiff an
ironmonger, and
indebted to de-
fendant for
goods sold.
Pract. Reg.
149, 194.
Gave bond to
the defendant
for payment
thereof.

Got his living
by buying and
selling.

Indebted to
several persons.

ANNE, &c. To our justices of the bench, greeting: we have by the grievous complaint of *Joseph Dickenson* of *London*, ironmonger, otherwise lately called, &c. understood, that whereas he the said *Joseph Dickenson*, at *London* aforesaid in the parish of *St. Mary le Bow* in the ward of *Cheape*, on the 5th day of *April* in the 2d year of our reign, was indebted to one *William Stephens* the younger, merchant, in 297 *l.* 16 *s.* of lawful money of *England*, for sundry goods and merchandizes of him the said *William* to the same *Joseph*, and at his request by the same *William* before that time sold and delivered; and being so therein indebted, the same *Joseph* for the better security of the said debt, the same day, year and place, by his certain writing obligatory sealed with the seal of him the said *Joseph*, and by the same *Joseph* then and there delivered, bearing date the said fifth day of *April* in the year aforesaid, acknowledged himself to be held and firmly bound to the said *William Stephens* the younger, merchant, in 600 *l.* of good and lawful money of *England*, to be paid to the said *William* when he should be thereto required, on condition nevertheless for the true payment of the sum of 297 *l.* 16 *s.* of like lawful money in manner and form following, to wit, The condition of this obligation is such, that if the above bound *Joseph Dickenson*, his heirs, executors or administrators, do well and truly pay, or cause to be paid, unto the above mentioned *William Stephens*, his executors, administrators or assigns, the full sum of 297 *l.* 16 *s.* of good and lawful money of *England* on the 25th day of *March*, which shall be in the year of our Lord then this obligation to be void, or else to remain in full force: and whereas also the said *Joseph* at the time of the sale and delivery of the goods and merchandizes aforesaid, and also on the said 5th day of *April*, and likewise on the 13th day of *December* in the year of the Lord was, and for the space of several years then last past had been, an ironmonger, and for all that time had used and exercised the art or trade of merchandize, and sought and got his livelihood and trade of living by buying, selling and merchandizing, to wit, at *London* aforesaid in the parish and ward aforesaid; and the said *Joseph* at and within that time, at *London* aforesaid in the parish and ward aforesaid, became and was justly and truly indebted to *J. Hellier*, *R. Edwards*, *J. House*, the said *William Stephens*, and to several other persons his creditors, being subjects born of this our kingdom of *England*, in the sum of 1000 *l.* of lawful money of *England*; and the said *Joseph Dickenson* being so indebted, and the art or trade aforesaid so as aforesaid using and exercising, the same *Joseph* afterwards, to wit, the same 13th day of *December* in the year of the Lord 1706 aforesaid, at *London* aforesaid in the parish and ward aforesaid, the same *John Hellier*, *R. Edwards*,

wards, *J. House* and the said *William Stephens*, not being paid or satisfied their true and just debts aforesaid, did depart and absent himself from his dwelling-house there being, with an intent that the said *William Stephens*, *J. Hellier*, *R. Edwards* and *J. House*, and the said other creditors of him the said *Joseph Dickenson*, should be delayed and hinder'd from and for the recovery of their true and just debts aforesaid from the same *Joseph* so as aforesaid due; and so on the same 13th day of *December* in the year of the Lord aforesaid, at *London* aforesaid in the parish and ward aforesaid, the same *Joseph Dickenson* manifestly became a bankrupt within the sense and true intent of the several statutes against bankrupts thereof lately made and provided, (the same *Joseph* then being a subject born of this our kingdom of *England*, and then and long before getting his trade of living by buying, selling and merchandizing, to wit, at the parish and ward aforesaid: and whereas also afterwards, to wit, on the 14th day of *December* aforesaid, at *Westminster* in the county of *Middlesex*, on the petition of the said *John Hellier*, as well on his own behalf as on the behalf of the other creditors of the said *Joseph Dickenson*, to the right honourable *Nathan Wright*, knt. then our lord keeper of our great seal of *England*, then and there in writing made and exhibited to have their remedies in that behalf against the same *Joseph Dickenson*, then being a bankrupt, our certain commission on the statutes against bankrupts made and provided, under our great seal of *England* sealed by the same *Joseph* here in court produced, bearing date the said 14th day of *December* in the year of our reign, directed to *M. Kellett* and *J. Jackson*, esq; *J. Onely*, *T. Clendon* and *J. Jackson*, gent. issued out of our court of chancery (our same court then being at *Westminster* aforesaid in the county of *Middlesex* aforesaid) by which said commission we named, assigned, appointed, constituted and ordained the said *M. K. J. J. J. O. T. C.* and *J. J.* our special commissioners, and by our same commission we gave full power and authority to our said commissioners, four or three of them, (of whom we ordered the said *M. K.* or *J. J.* to be one) to proceed according to the several statutes aforesaid of bankrupts in such case made and provided, and in our said commission specially mentioned not only of and concerning such bankrupt, his body, lands freehold and copyhold, his goods, debts and other things whatsoever, but also against all other persons, as by concealment, claim or otherwise, did or should offend touching the premises, or any part thereof, against the true intent and meaning of the statutes aforesaid, or any of them; and to do and execute all and every thing and things whatsoever, as well for and towards satisfaction and payment of the said creditors, as towards and for all other intents and purposes whatever, according to the order and provision of the same statutes; and by the same commission we ordered and commanded the said commissioners, four or three of them, (whereof we ordered the said *M. K.* and *J. J.* to be one) to proceed to the execution and finishing of

Abscinded and became a bankrupt.

[534]

Petition to the lord keeper.

The commission.

Declared a
bankrupt.

4 A. c. 17.

[535]

our said commission with all diligence and effect, as our special trust was reposed in them, as by the said commission is more fully manifest and appears: by virtue of which our said commission, and by the force of the statutes aforesaid in the same particularly mentioned, afterwards, to wit, on the 15th day of *December* in the year of the Lord above said, at *London* aforesaid in the parish and ward aforesaid, the said *M. K. T. Clendon* and *J. Jackson*, three of the said commissioners in our commission aforesaid mentioned, for the better remedy of all the creditors of the said *Joseph Dickenson*, and after mature deliberation thereon taken, declared, that according to their opinions he the said *Joseph Dickenson* had become a bankrupt before the issuing of the said commission; and the said *M. K. T. Clendon* and *J. J.* then and there farther proceeded to execute the commission aforesaid, according to the power and authority to them thereby given, and according to the form and effect of the statutes aforesaid in the same mentioned: and whereas also by a certain act made in our parliament held at *Westminster* in the county of *Middlesex* on the 25th day of *October* in the 4th year of our reign, reciting, that whereas many persons had and did daily become bankrupts, not so much by reason of losses and unavoidable misfortunes, as to defraud and hinder their creditors of their just debts and duties to them due and owing, for the prevention whereof (among other things) it was and is enacted by the authority of the same parliament, that if any person or persons who from and after the 24th day of *June* in the year of the Lord 1706 should become a bankrupt within the several statutes made against bankrupts, or any of them, and against whom a commission of bankrupts under the great seal of *England* should be awarded and issued out, should not, within thirty days next after notice thereof in writing should be left at the place of the usual abode of such person or persons, and notice given in the *Gazette*, that such commission or commissions is or are issued forth, and of the time and place of a meeting of the commissioners, surrender him, her or themselves to the commissioners named in the said commission, or some of them, and submit to be examined from time to time upon oath by and before the said commissioners, or the major part of them, by the said commission authorised, and in all things conform to the several statutes before then made concerning bankrupts, and also upon such examination fully and truly disclose and discover how and in what manner, and to whom, and upon what consideration he, she, or they had disposed, assigned or transferred any of his, her or their goods, wares, merchandizes, money, or other effects or estate, and all books, papers and writings relating thereunto, of which he, she or they were possessed, or in or to which he, she or they were any way interested or intitled, or which any person or persons had had, or had in trust for him, her or them, or for his, her or their use, at any time before or after the issuing out of the said commission, and also deliver up unto the said commissioners, or the

the major part of the commissioners by the said commission authorized, all such part of his, her or their the said bankrupt's goods, wares, merchandizes, effects and estate, and all books, papers and writings relating thereunto, as at the time of such examination should be in his, her or their possession, custody or power, (his, her or their, and his, her or their wives and children's necessary wearing apparel only excepted) then he, she or they, the said bankrupt in case of any default or wilful omission therein, or in any the premises, and being thereof lawfully convicted by indictment or information, should suffer as a felon without the benefit of clergy: and it was farther by the statute aforesaid enacted by the authority of the same parliament, that all and every person and persons so becoming bankrupt as aforesaid, who should within the time limited by that act surrender him, her or themselves, to the major part of the commissioners therein named, and in all things conform, as in and by that act is directed, should be allowed the sum of 5 *l.* *per cent.* out of the neat product of all the estate that should be recovered in and received on such discovery, which should be paid unto him by the assignee or assignees of the said commissioners, so as the said 5 *l.* *per cent.* should not amount in the whole to above the sum of 200 *l.* and should be discharged from all debts by him, her or them due and owing at the time that he, she or they did become bankrupt; and in case any such bankrupt should afterwards be arrested, prosecuted or impleaded for any debt due before such time as he, she or they became bankrupt, such bankrupt should be discharged upon common bail, and should and might plead in general, that the cause of such action of suit did accrue before such time as he became bankrupt, and might give that act and the special matter in evidence; and if a verdict pass for the defendant, or the plaintiff should become nonsuited, or judgment be given against the plaintiff, the defendant should recover his costs as in other cases: and for the better encouragement of such persons as were then become bankrupts to make a true and just discovery of their estates, and to deliver the same up for the use and benefit of their creditors, it was farther by the same statute enacted by the authority of the same parliament, that all and every person and persons who were become bankrupts, and against whom a commission of bankrupt had issued before the 10th day of *March* 1705, who should voluntarily on or before the 24th day of *June* 1706 surrender him, her or themselves to the commissioners in such commission named, or the major part of them, and submit to be examined from time to time upon oath by and before the said commissioners, or the major part of them, and in all things conform to the several statutes then made concerning bankrupts, and to that act, should to all intents and purposes have the benefit of that act; provided always, and by the same act it was farther enacted by the authority of the same parliament, that no discovery upon oath to be made by any bankrupt of his or her estate or effects, pursuant to that act, should

Sec. 7.

Sec. 17.

Sec. 19.

intitle

[536]

Judgment recovered against the plaintiff on the bond.

intitle such bankrupt to the benefits allowed by the same act, unless the commissioners of bankrupts, or the greater part of them that should be named in the commission issued, or to be issued against him or her, should in writing under their hands and seals certify to the lord chancellor of *England*, lord keeper, or commissioners for the custody of the great seal of *England* for the time being, that such bankrupt had made discovery of his estate and effects, and in all things conformed himself according to the directions of the same act, and that there did not appear to them any reason to doubt of the truth of such discovery, or that the same was not a full discovery of all such bankrupt's estate and effects; and unless such certificate should be allowed and confirmed by the lord chancellor, lord keeper or commissioners for the custody of the great seal of *England* for the time being, or by such two of the judges of the courts of queen's bench, common pleas and court of exchequer at *Westminster*, to whom the consideration of such certificate should be referred by the lord chancellor, lord keeper or commissioners for the custody of the great seal of *England* for the time being; and the creditors of such bankrupts were allowed to be heard, if they should think fit, before the respective persons aforesaid, against the making such certificate, and against the confirmation thereof, as by the same act, among other things, more fully appears: and whereas also afterwards, to wit, in *Easter* term in the fifth year of our reign in our court of the bench at *Westminster* in the county of *Middlesex*, before *T. Trevor*, knt. and his companions, our justices of the bench aforesaid, the said *William Stephens* by our original writ of debt directed to our sheriffs of *London*, and returnable and returned in our said court before you impleaded, the same *Joseph Dickenson* of and for the said 600 *l.* in the bond aforesaid above contained, and it hath been in such manner proceeded in our same court upon the writ aforesaid, that on the appearance of the same *Joseph Dickenson* to the same writ in our said court before you in the same *Easter* term duly made, the said *W. Stephens* by *Richard Cooke* his then attorney in declaring on the writ aforesaid against the same *Joseph Dickenson* said, that whereas (*here recite the declaration*) whereby the said *William* had been prejudiced, and had damage to the value of 20 *l.* as he said: and therefore he produced the suit, &c. And the said *William* then produced in our said court the writing aforesaid, which the debt aforesaid in form aforesaid testified, the date whereof was the same day and year aforesaid, &c. And the same *Joseph* by *J. Jackson* his attorney then came and defended the force and injury when, &c. and prayed *oyer* of the writing obligatory aforesaid; and to him it was read, &c. He likewise prayed *oyer* of the condition of the same writing; and to him it was read in these words, to wit, (*here recite the condition*): which being read and heard, the same *Joseph* then prayed leave to implead thereto in our same court of the bench until on the morrow of the holy *Trinity*; and he had, &c. The same day was given to

to the ſaid *Joſeph, &c.* On which day, &c. (*here recite the judgment thereon mutatis mutandis*) whereof the ſame *Joſeph* is convicted, as by the record and proceedings thereof in our ſame court of the bench now before you remaining is manifeſt and appears: and it is farther ſhewn to us on the behalf of the ſaid *Joſeph Dickenſon* grievouſly complaining, that altho' the ſame *Joſeph Dickenſon* in conformity to the ſaid ſtatute, and in purſuance of the ſame, after the making of the ſtatute aforeſaid, and before the 24th day of *June* in the ſame ſtatute mentioned, to wit, on the 30th day of *May* in the year of the Lord 1706, at *London* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheape*, voluntarily ſurrendered himſelf to the ſaid *M. K. T. C.* and *J. J.* being the major part of the commiſſioners by the ſaid commiſſion above recited authoriſed (the ſaid commiſſion then and yet being and remaining in its full force and virtue not revoked, annulled or determined in any manner) and then and there ſubmitted himſelf to be examined from time to time on his oath by and before the ſaid commiſſioners by the ſaid commiſſion authoriſed, or the major part of them; and then and alſo on the 21ſt day of *June* in the year of the Lord 1706 aforeſaid, was ſeverally examined on his oath by and before the ſaid *M. K. T. C.* and *J. J.* and upon ſuch his examinations did fully and truly reveal and diſcover to the ſame commiſſioners how and in what manner, and to what perſons and upon what conſiderations he the ſame *Joſeph* had diſpoſed, assigned and transferred any, every and what part of his goods, wares and merchandizes, money, effects and eſtate, and all books, papers and writings relating thereto of which he was poſſeſſed, and in and to which he was any way intereſted and intituled, and which any perſon had in truſt for him and to his uſe at any time before or after the iſſuing out of the ſaid commiſſion, and alſo delivered up to the ſaid commiſſioners all his goods, wares and merchandizes, effects and eſtates, and all books, papers and writings relating thereunto, as at the times of his examinations; or any of them, were in his poſſeſſion, cuſtody or power, (his and his wife's and children's neceſſary wearing apparel only excepted) and in all things conformed to the ſeveral ſtatutes made before the time of the making of the act above recited concerning bankrupts, and to the ſame act above recited, to wit, at *London* aforeſaid in the pariſh and ward aforeſaid; of which ſurrender and ſubmiſſion of the ſaid *Joſeph* to the commiſſioners aforeſaid, and alſo of the time of his examination before the ſame commiſſioners, the ſaid *W. Stephens* and the other creditors of him the ſaid *Joſeph* on the ſame 30th day of *May* in the year aforeſaid, before the examination aforeſaid, and before the certificate hereafter mentioned had notice, to wit, at the pariſh and ward aforeſaid: and altho' likewise thereupon afterwards, to wit, on the ſaid 21ſt day of *June* in the year aforeſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, the ſaid *M. R. T. C.* and *J. J.* then being the major part of the commiſſioners by the ſaid commiſſion authoriſed,

Plaintiff ſurrender'd himſelf, and ſubmitted to be examined.

Delivered up his effects to the commiſſioners.

[537]

The certificate: rised, by their certificate in writing under their hands and seals, which the same *Joseph* in the court of chancery produced, bearing date the same day and year, certified to the right honourable *William Cowper*, being then and there our keeper of our great seal of *England*, that the same *Joseph* on his examinations aforesaid had made discovery of all his estate and effects, and in all things conformed himself according to the directions of the statutes aforesaid above recited, and that there did not appear to them the said commissioners any reason to doubt of the truth of such discovery, or that the same was not a full discovery of all the estate and effects of him the said *Joseph Dickenson*: and altho' likewise afterwards, to wit, on the 25th day of *June* in the year of the Lord above said, at *London* aforesaid in the parish and ward aforesaid, the said certificate of the said commissioners was allowed and confirmed by the said right honourable *William Cowper*, being then our keeper of our great seal of *England*, under his hand; of which said certificate of the said commissioners, and before the allowance and confirmation of the same above mentioned, to wit, on the said 21st day of *June* in the year of the Lord aforesaid last mentioned, at *London* aforesaid in the parish and ward aforesaid, the said *William Steavens* and the other creditors of him the said *Joseph Dickenson* had notice; and altho' also by virtue of the premisses, and by force of the statute aforesaid, the same *J. Dickenson* from the said debt of 600 *l.* in the said writing obligatory and the said judgment above recited mentioned, and from every part thereof, was and is discharged, and for that reason also from every execution for the debt and damages aforesaid, on pretence of the judgment aforesaid against him the said *Joseph* at the suit of the said *William Steavens* to be had or prosecuted of right is and ought to be discharged, as the said *Joseph Dickenson* is by proper ways and means ready to make manifest: nevertheless the said *William Steavens* not regarding the premisses aforesaid, but contriving unjustly to oppress him the said *Joseph Dickenson*, by reason of the judgment aforesaid against him the said *Joseph Dickenson* in form aforesaid given, hath lately unjustly sued out execution against the same *Joseph* of and upon the judgment aforesaid for the said 600 *l.* debt, and his damages aforesaid, issuing out of our said court of the bench aforesaid, and endeavours and daily contrives unjustly to take and arrest him the said *Joseph* by colour and pretence thereof by his body in execution for the debt and damages aforesaid, to the great damage and grievance of him the said *Joseph*, wherefore the same *Joseph Dickenson* hath most humbly implored us to grant him a proper remedy in this behalf: and because we will not suffer him the said *Joseph* to be any wise injured in this behalf, and being willing that what is just should be done, we command you, that the complaint of the said *Joseph Dickenson* in this behalf being heard, and the parties aforesaid being called before you, and their reasons on both sides being heard, you cause full and speedy justice to be done to the

The allowance thereof by the lord keeper.

Whereby the plaintiff ought to be discharged.

Yet the defendant took him in execution.

saïd *Joseph Dickenson*, as of right and according to the law and custom of our kingdom of *England* you shall see proper and just to be done. Witness ourself at *Westminster* day of in the sixth year of our reign.

Bill of Middlesex.

[538]

Middlesex, THE sheriff is commanded, that he take *Richard G. bart. if, &c.* and him safely, &c. so that he may have his body before the lord the king at *Westminster* on Monday next after the morrow of the ascension of the Lord, to answer to *Erasmus Dryden* in a plea of trespass, and also to the bill of the saïd *Erasmus* against the saïd *Richard* for 70*l.* upon promise, according to the custom of the court of the saïd lord the king before the king himself to be exhibited; and have there then this precept.

By bill.

Holt. Coleman.

Middlesex, THE coroners of the county of *Middlesex* are commanded, that that they take *Philip D. gent. Roger P. and John L. gent. if, &c.* and them safely, &c. so that they may have their bodies before the lord the king at *Westminster* on day next after to answer to *Robert Beachcroft*, knt. and *Henry Furnese*, knt. sheriff of the county aforesaid, in a plea of trespass; and have there then this precept.

By bill.

Ventris.

Capias.

[539]

JAMES, &c. To the sheriff of *Sussex*, greeting: we command you, that you take *Storer Bythewood* late of in your county, yeoman, if he shall be found in your bailiwick, and him safely keep, so that you may his body before us wheresoever we shall then be in *England*, to answer to *William Brett* in a plea, why with force and arms he made an assault on him the saïd *William* at *Lewis*, and him beat, wounded and abused, so that his life was despaired of, and other outrages on him committed, to the great damage of him the saïd *William*, and against our peace; and have there this writ. Witness, &c.

A special *capias* in assault founded on an original.

The like in trespass with cattle, and tearing up his soil with carts.

JAMES, &c. To the sheriff of *Sussex*, greeting: we command you, that you take *John Shore* late of *Leaves* in your county, clerk, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us wheresoever we shall then be in *England*, to answer to *Charles Smith*, gent. in a plea, why with force and arms the closes of him the said *Charles* at *Hamsley* he broke and entred, and the grafs to the value of 20 s. there lately growing by his feet with walking trod down and destroyed, and also other grafs to the value of 10 l. there likewise lately growing with certain cattle eat up, trod down and destroyed, and also his soil there with certain carts and carriages tore up, and other outrages on him committed, to the great damage of him the said *Charles*, and against our peace; and have there this writ. Witness, &c.

Capias ad Satisfaciendum.

[540]

Ca. fa. on a judgment on the scire facias quare execution non after a writ of error in K. B. 3 H. 7. 10. 33 C. 2. c. 2. § 10.

GEORGE, &c. To the sheriffs of *London*, greeting: we command you, that you take *Elizabeth S.* late of *London*, widow, if she shall be found in your bailiwick, and her safely keep, so that you may have her body before us wheresoever we shall then be in *England*, to satisfy 8. E. 6l. 10s. which to the same *Sarah* in our court before us, according to the form of the statute lately made and provided, were adjudged for her damages, costs and charges, which she had by reason of the delay of execution of a certain judgment for 26 l. by her the said *Sarah* against the said *Elizabeth* lately in our court before *Peter King*, knt. and his companions, our justices of the bench at *Westminster* obtained, by pretence of a certain writ of error by her the said *Elizabeth* of and upon the premisses prosecuted, as by the record and proceedings of the judgment aforesaid, which we have lately for certain causes of error caused to be brought into our same court before us, appears to us on record; and whereon the same *Elizabeth* afterwards in our court before us that writ of error hath not prosecuted, as likewise appears to us on record; and have there then this writ. Witness, &c.

Ca. fa. on a judgment affirmed on a writ of error in the time of the late king.

ANNE, &c. To the sheriff of *Lincoln*, greeting: we command you, that you take *Tho. A.* late of *Fulshawe* in your county, gent. otherwise called, &c. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us wheresoever, &c. to satisfy *Francis B.* 10 l. debt which the same *Francis* lately in the court of the lord *William* the Third, late king of *England*, before *George Treby*, knt. and his companions, justices of the same late king of

of the bench at *Westminster* hath recovered against him, and also 15*l.* for his damages which he hath sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *Thomas* is convicted, as by the inspection of the record and proceedings thereof, which into the court of the said late king before the late king himself, the same late king for certain causes of error lately caused to be brought, and which in the court of the lord the late king before the king himself being in all things affirmed now remaining appears to us on record, and likewise 10*l.* 10*s.* which to the same *Francis* in the same court of the said late king before the king himself, according to the form of the statute in such case made and provided, were adjudged for his damages, costs and charges, which the said *Francis* had sustained by reason of the delay of execution of the judgment aforesaid, by pretence of the prosecution of the said writ of error of the said late king by the said *Thomas* of and upon the premisses as aforesaid prosecuted, whereof the same *Thomas* is likewise convicted, as it also appears to us on record; and have there this writ. Witness *J. Holt*, knt. &c.

3 H. 7. c. 10.
13 C. 2. c. 2.
§ 10.

ANNE, &c. To the sheriff of *Middlesex*, greeting: we command you, that you take *J. T.* of *Norton-hall* in the county of *Somerset*, gent. otherwise called, &c. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on _____ day next after _____ to satisfy *E. Ireland*, widow, executrix of the last will and testament of *E. J.* her late husband deceased, 40*l.* debt which the same *Elizabeth* lately in the court of the lord and lady *William* and *Mary*, late king and queen, before the late king and queen themselves at *Westminster* hath recovered against him, and also 23*s.* which to the same *Elizabeth* in the same court of the said late king and queen before the late king and queen themselves at *Westminster* aforesaid were adjudged for her damages which she had sustained, as well by reason of the detention of that debt, as for her costs and charges by her the said *E.* about her suit in that behalf expended, whereof the said *J.* is convicted, as it appears to us on record; and whereon in the same court of the said late king before the king himself it is considered, that the said *E.* may have her execution against the said *J.* for the debt and damages aforesaid; and have there then this writ. Witness, &c.

[541]
Ca. fa. in debt
after a *scire facias* for an executrix on a judgment recovered in the time of the late king.

ANNE, &c. To the sheriffs of *London*, greeting: we command you, that you take *G. J.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on _____ day next after _____ to satisfy *T. W.* 5*l.* to the same *T.* by our court before us adjudged, according to the form of the statute in such case lately made

Ca. sz. for 5 l.
for not filing bail
within eight
days, according
to 9 & 10 W.
3. c. 25 § 33.

made and provided, because the said *G.* hath not filed nor entered, or caused to be entered or filed, any common bail, or any appearance, in a certain plea of trespass, at the suit of the said *T.* within eight days next after the return of our certain writ by the said *T.* out of our court before us against the said *G.* prosecuted, whereof the said *G.* is convicted; and whereon in our same court before us it is considered, that the said *T.* may have execution thereof against the said *G.* And have there then this writ. Witness, &c.

Ca. sa. for costs
on quashing a
writ of error by
4 Ann. c. 16.
§ 25.

ANNE, &c. to satisfy *John Naseby* 6*l.* according to the form of the statute in such case lately made and provided, adjudged for his damages, costs and charges, which he hath sustained by reason of the delay of execution on a certain adjudication of execution on a recognisance against the said *John Farrington* to the same *John Naseby* before our justices of the bench lately acknowledged, by the pretence of the prosecution of a vitious and defective writ of error in that behalf by the said *John Farrington* lately brought, and which into our court before us we lately caused to be brought, appears on record; and whereon in our same court before us it is considered, that the said *John Naseby* may have his execution against the said *John Farrington* for the said 6*l.* according to the statute aforesaid, our writ of *superfedeas* to you lately directed to the contrary notwithstanding; and have there this writ. Witness, &c.

Ca. sa. on the
affirmance of a
judgment in
parliament after
an affirmance in
the exchequer
chamber.

GEORGE, &c. To the sheriff of *Somerset*, greeting: we command you, that you take *Thomas Smith*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us wheresoever we shall then be in *England*, to satisfy *Edward P.* esq; as well 500*l.* debt which the same *Edward* lately in our court before us at *Westminster* hath recovered against him, and also 20*l.* 2*d.* for his damages which he sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Thomas* is convicted, as it appears to us on record, as also 90*l.* which to the same *Edward P.* in our exchequer chamber before our justices of the bench and the barons of our exchequer of the degree of the coif there, according to the form of the statute lately made and provided, were adjudged for his damages, costs and charges, which he had by reason of the delay of execution of the judgment aforesaid, by pretence of prosecuting our writ of error by him the said *Thomas* of and upon the judgment aforesaid prosecuted, whereon that judgment was in the same court afterwards affirmed, and whereof the same *Thomas* is convicted, as by the inspection of the record and proceedings thereof from the said court of exchequer chamber aforesaid into our said court before us, according to the form of the statute aforesaid remitted, and in our same court before us now remaining in all things affirmed, appears

appears likewise to us on record, and also 5*l.* which to the same *Edward P.* in our court of parliament, according to the form of the statute thereof lately made and provided, were adjudged for his damages, costs and charges, which he had by reason of the delay of execution of the judgment aforesaid, by pretence of prosecuting a writ of error, by him the said *Thomas* of and upon the judgment aforesaid in our court of parliament, and which by our said court of parliament is in all things affirmed, whereof the same *Thomas* is convicted, as by the inspection of the record and proceedings thereof from our said court of parliament into our court before us remitted appears likewise to us on record; and have there this writ. Witnesses, &c.

4 & 5 A.

G E O R G E, &c. To the sheriff of *Surry*, greeting: we command you, that you take *Henry S.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on _____ day next after to satisfy *Edward P.* 70*s.* which to the same *Edward* in our court before us at *Westminster*, according to the form of the statute thereof lately made and provided, were adjudged for his costs and charges in and about his defence in a certain action of trespass on the case in the same court before us brought, in which said action the said *Henry S.* against the said *Edward P.* as well for us as himself prosecuted, and in the same action the same *Henry* afterwards was nonsuited, whereof he is convicted, as it appears to us on record; and have there then this writ. Witnesses *John Pratt*, knt. at *Westminster* 28th day of *November* in the 5th year of our reign.

Ca. sa. for defendant on a nonsuit for not joining issue in an action qui tdm.
23 H. 8. c. 15.
8 El. c. 2.
4 Jac. c. 3.

G E O R G E, &c. To the sheriff of *Middlesex* greeting: we command you, that you take *George B.* esq; if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on _____ day next after to satisfy *Grace B.* widow, and *John R.* esq; surviving executors of the last will and testament of *James B.* esq; deceased, 100*l.* debt which the same *Grace* and *John Riches*, esq; and *John Apsley* and *William Fashion*, as executors of the said *James Butler* now lately deceased, lately in the court of the lady *Anne*, late queen of *Great Britain*, &c. before the late queen herself at *Westminster* against the said *George* have recovered, and also 6*l.* 5*s.* which to the same *Grace*, *John Riches*, *John Apsley* and *William* in the same court of the said late queen were adjudged for their damages which they had sustained, as well by reason of the detention of that debt, as for their costs and charges by them about their suit in that behalf expended, whereof the said *George* is convicted, as it appears to us on record; and whereon in our court before us at *Westminster* it is considered, that the said *Grace* and *John Riches* may have their execution against the said *George* for the debt and damages aforesaid, as also for 6*l.* for their costs and charges by our court be-

Ca. sa. in debt for the surviving executors after verdict in a scire facias.

8 & 9 W. 3.
c. 10.

fore us at *Westminster*, according to the form of the statute in such case thereof made and provided, to the same *Grace* and *John Riches* adjudged, whereof the same *George* is convicted, as it likewise appears to us on record; and have there then this writ. Witness *Thomas* lord *Parker*, baron of *Macclesfield*, at *Westminster* 10th day of *July* in the third year of our reign.

Ca. sa. in replevin after a writ of inquiry of the value of the goods distrain'd and the arrear of rent.

7 H. 8. c. 4.

21 H. 8. c. 19.

37 C. 2. c. 7.

[543]

A N N E, &c. Whereupon on the petition of the said *William* we commanded you, that according to the form of the statute in such case lately made and provided, by the oath of 12 good and lawful men of your county you should diligently inquire how much of the yearly rent aforesaid at the said time of the caption and distress of the goods and chattels aforesaid was in arrear and unpaid, and how much the goods and chattels aforesaid so as aforesaid taken and distrained were worth, according to the true value of the same; and the inquisition which, &c. to us from the day of *St. Michael* in three weeks last past, wheresoever, &c. under your seal and the seals of those by whose oath you should take that inquisition, you should send, together with the writ to you in that behalf directed; and you on that day returned here a certain inquisition taken before you at *East Grinstead* in your county on the fifth day of *August* last past, by the oath of 12 good and lawful men, by which it is found, that at the said time of the caption and distress of the goods and chattels aforesaid, 50*s.* of the yearly rent aforesaid, in the cognisance aforesaid mentioned to be due to the same *William*, were due, in arrear and unpaid; and that the goods and chattels, so as aforesaid taken and distrained, according to the true value of the same, were worth 50*s.* Therefore it was considered, that the said *William* should recover against the said *Matthew* the said 50*s.* of the annual rent aforesaid, being by the inquisition aforesaid in form aforesaid found, and his damages by reason of the premisses to 9*l.* to the same *William* at his request for his costs and charges by him in that behalf sustained, according to the form of the statute thereof lately made and provided, by the court here of increase adjudged; which said arrears of the yearly rent, costs and charges aforesaid in the whole amount to 11*l.* 10*s.* Therefore we command you, that you take the said *Matthew*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us on the octave of *St. Hilary*, wheresoever, &c. to satisfy to the said *William* the said 50*s.* being the arrears of the yearly rent aforesaid, and also the said 9*l.* to the same *William* for his costs and charges aforesaid by him in this behalf sustained, according to the form of the statute aforesaid, by our court before us adjudged in form aforesaid; and have there this writ, &c.

Testatum non emittas c. 1. §. in debto a bail-bond.

G E O R G E, &c. To the sheriff of *Kent*, greeting: where- as we lately commanded our sheriff of *Middlesex*, that he should take *A. T.* gent. otherwise called, &c. if he should be found

found in his bailiwick, and him should safely keep, so that he might have his body before us at *Westminster* on a certain day now past, to satisfy to *T. C. bart.* late sheriff of your county aforesaid, 40*l.* debt which the same *Thomas* had lately in our court before us at *Westminster* recovered against him, and also 30*s.* which to the same *T. C. bart.* in our same court before us at *Westminster* aforesaid were adjudged for his damages which he had sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Andrew* is convicted, as it appears to us on record: and our said sheriff of *Middlesex* on that day returned to us, that the said *Andrew* was not found in his bailiwick, whereupon on the part of the said *Thomas* in our court before us it is sufficiently testified, that the said *Andrew* runs up and down and secretes himself in your county: therefore we command you, that you do not omit on account of any liberty of *Romney Marsh* in your county, but enter into it and take the said *Andrew*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on day next after to satisfy to the said *Thomas* the debt and damages aforesaid; and have there then this writ. Witnesses *J. Pratt, knt. &c.*

WILLIAM, &c. To the sheriff of *Dorset*, greeting: *Ca. sa. in debt.*
we command you, that you take *George P.* the younger of *Tollar Welme* in the county of *Dorset*, esq; if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on day next after to satisfy *Margaret M.* widow, 200 *l.* debt which the same *Margaret* hath lately in our court before us at *Westminster* recovered against him, and also 53 *s.* which to the same *Margaret* in our same court before us at *Westminster* were adjudged for her damages which she sustained as well by reason of the detention of that debt, as for her costs and charges by her about her suit in that behalf expended, whereof the same *George* is convicted, as it appears to us on record; and have there this writ. Witnesses *J. Holt, &c.*

ANNE, &c. To the sheriff of *Berks*, greeting: we com- *Ca. sa. in tres-*
mand you, that you take *Peter Munck*, if he shall be found *pals.*
in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on day next after to satisfy to *John M.* the elder 13*l.* 10*s.* which the same *John* hath lately in our court before us at *Westminster* recovered against him for his damages which he sustained, as well by reason of certain trespasses by him the said *Peter* to the same *John* lately done, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Peter* is convicted, as it appears to us on record; and have there then this writ. Witnesses

ness *J. Holt*, knt. at *Westminster* 24th day of *April* in the second year of our reign.

[544]

*Non omittas ca.
sa. in debt.*

WILLIAM, &c. To the sheriff of *Northampton*, greeting: we command you, that you do not omit on account of any liberty in your county, but you enter into it and take *Joseph W.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on _____ day next after _____ to satisfy to *Samuel C. esq:* 44*l.* debt which the same *Samuel* hath lately in our court before us at *Westminster* recovered against him, and also 53*s.* which to the same *Samuel* in our same court before us at *Westminster* were adjudged for his damages which he sustained, as well by reason of the detention of that debt, as for his costs and charges by him the said *Samuel* about his suit in this behalf expended, whereof the same *Joseph* is convicted, as it appears to us on record; and have there then this writ. Witness *J. Holt*, knt. at *Westminster* 9th day of *July* in the 13th year of our reign.

*Ca. sa. on a non-
pros for want of
a declaration.*

ANNE, &c. To the sheriff of *Essex*, greeting: we command you, that you take *Joseph G.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on *Wednesday* next after 15 days of *Easter*, to satisfy to *Thomas B.* and *John B.* 30*s.* which to the same *Thomas* and *John* in our court before us at *Westminster*, according to the form of the statute thereof lately made and provided, were adjudged for his costs and charges about his defence in a certain action of trespass by the said *Joseph G.* against the said *Thomas* and *John* in our same court before us brought, in which said action the same *Joseph* afterwards did not prosecute, whereof he is convicted, as it appears to us on record; and have there then this writ. Witness *John Holt*, knt. at *Westminster* 12th day of *February* in the first year of our reign.

23 H. 8. c. 15.
8 El. c. 2.
4 Jac. c. 3.

*Testatum ea. sa.
for damages in
ejectment after
judgment af-
firmed in K. B.
on a writ of er-
ror out of C. B.*

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: whereas we lately commanded our sheriff of *Suffex*, that he should take *Hannah L.* late of the parish of *Wapping, Whitechapple*, in his county, spinster, if she should be found in his bailiwick, and her safely keep, so that he might have her body before us from the day, &c. to satisfy to *Nathaniel S.* 10*l.* which to the same *Nathaniel* were lately in our court before *G. T. knt.* and his companions, our justices of the bench at *Westminster*, adjudged for his damages which he had sustained, as well by reason of a certain trespass and ejectment on the same *Nathaniel* by the said *Hannah* lately committed, as for his costs and charges by him about his suit in that behalf expended, whereof the said *H.* is convicted, as by the inspection of the record and proceedings thereof, which we caused to be brought into our court before us, by virtue of our writ to correct error, by the said *H.* of

and

and upon the premisses prosecuted, and which in our court before us in all things affirmed now remaining appears to us on record, and also 7*l.* which to the same *N.* in our same court before us at *Westminster* aforesaid, according to the form of the statute in such case made and provided, were adjudged for his damages, costs and charges, which he sustained by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting our said writ to correct error, whereof the same *H.* is convicted, as it appears likewise to us on record: and our said sheriff of *Sussex* hath thereon returned to us, that the said *Hannah* is not found in his bailiwick: upon which on the part of the said *N.* in our court before us at *Westminster* it is sufficiently testified, that the said *Hannah* runs up and down and secretes herself in your county: therefore we command you, that you take her, if she shall be found in your bailiwick, and her safely keep, so that you may have her body before us on the morrow of the ascension of the Lord, wheresoever, &c. to satisfy the said *N.* the damages aforesaid; and have there then this writ. Witness, &c.

3 H. 7. c. 10.
13 C. 2. c. 2.
§ 10.

WILLIAM, &c. To the sheriff of *Stafford*, greeting: we command you, that you take *Walter J.* clerk, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us from the day of wheresoever, &c. to satisfy to *Susanna J.* widow, as well 102*l.* which to the same *Susanna* in our court before *George Treby*, *knt.* and his companions, our justices of the common bench at *Westminster*, were adjudged for the value of the third part of one messuage, 10 acres of meadow and 30 acres of pasture with the appurtenances in *Earnfield*, otherwise *Yearnfield*, as the dower of her the said *Susanna* of the endowment of *John Jedrell* her late husband, whereof she hath nothing, as for her costs and charges by her about her suit in that behalf expended, whereof the same *Walter* is convicted, as by the inspection of the record and proceedings thereof, which we have caused to be brought into our court before us by virtue of our writ to correct error by the said *Walter* of and upon the premisses prosecuted, and which in our same court before us in all things affirmed now remaining appears to us on record, as also 18*l.* which to the same *Susanna* in our same court before us at *Westminster* aforesaid, according to the form of the statute in such case made and provided, were adjudged for her damages, costs and charges, which she had sustained by reason of the delay of execution of the judgment aforesaid, on pretence of the prosecution of our said writ of error, whereof the same *Walter* is also convicted, as it likewise appears to us on record; and have there this writ. Witness *J. Holt*, *knt.* &c.

[545]
Ca. sa. in dower for damages on judgment affirmed in *K. B.* and for costs for delay of execution.

3 H. 7. c. 10.
13 C. 2. c. 2.
§ 10.

WILLIAM, &c. To the sheriffs of *London*, greeting: we command you, that you take *E. R.* late of *C.* in the County of *Salop*, yeoman, if he shall be found in your bailiwick, and

Ca. sa. on a judgment in *C. B.* where the defendant brought error and did not prosecute.

and him safely keep, so that you may have his body before us from the day of wheresoever, &c. to satisfy *R. B.* gent. one of the attornies in our court of the bench at *Westminster*, 65*l.* 16*s.* 8*d.* which the same *R.* lately in our court before *G. T.* knt. and his companions, our justices of the bench at *Westminster* aforesaid; hath by our writ, and by the judgment of the same court, recovered against him for his damages which he had sustained, as well by reason of a certain trespass to the same *R.* by the said *E.* lately done, as for his costs and charges by him about his suit in that behalf expended, whereof the same *E.* is convicted, as by the inspection of the record and proceedings thereof, which we lately for certain reasons of error caused to be brought into our court before us, appears to us on record, and also 61*s.* which in our said court before us at *Westminster* were to the same *R.* according to the form of the statute in such case made and provided, adjudged for his damages, costs and charges, because the same *E.* did not prosecute his writ of error aforesaid, whereof the same *E.* is likewise convicted, as it appears also to us on record; and have there this writ. Witnels, &c.

3 H. 7. c. 10.
13 C. 2. c. 2.
§ 10.

Testatum ca.
sa. for the resi-
due in debt on a
judgment
against bail on
a recognizance
in C. B. affirm-
ed in K. B.

G E O R G E, &c. To the sheriff of *Middlesex*, greeting: whereas we commanded you by our writ, that of the lands and chattels of *William T.* of the parish of *St. Margaret, Westminster* in your county, gent. in your bailiwick, you should cause to be made 100*l.* and of the lands and chattels of *John B.* of in your county, gent. in your bailiwick, you should cause to be made 100*l.* to be paid to *John F.* according to the form and effect of the adjudication of execution on a certain recognizance by them the said *W. T.* and *J. B.* to the said *John Ford* in our court before *P. King*, knt. and his companions, our justices of the bench at *Westminster* acknowledged, as by the record and proceedings of the adjudication of the execution thereof, which we lately caused to be brought into our court before us, for certain reasons of error to be corrected in the same appears to us on record, and which in our same court before us, being in all things affirmed, now remaining appears likewise to us on record, as also 12*l.* which to the same *John Ford* in our same court before us, according to the form of the statute in such case made and provided, were adjudged for his costs and charges which he had sustained by reason of the delay of execution of the judgment aforesaid, on the pretence of the prosecution of our said writ of error by the said *W. T.* and *J. B.* of and upon the premises as aforesaid prosecuted, whereof the same *W. T.* and *J. B.* are convicted, as it appears also to us on record; and that you should have that money before us wheresoever, &c. to be paid to the said *John F.* for his debt, damages, costs and charges aforesaid; and you on that day returned to us, that for execution to be made of the writ aforesaid to you directed, you had commanded the bailiff of the dean and chapter of the collegiate

3 H. 7. c. 10.
13 C. 2. c. 2.
§ 10.

Precept to the
bailiff.

collegiate church of *St. Peter, Westminster*, who hath the full execution of all warrants, writs and precepts, to him directed; which said bailiff, to wit, *W. G. esq;* had thus answered you, that of the goods and chattels of the said *John B.* he had caused to be made 4*l.* 4*s.* part of the debt and damages aforesaid, which said money before us at the day and place aforesaid he had ready to be paid to the said *John Ford*, in part of satisfaction of the debt and damages aforesaid; and he farther certified, that the said *John B.* had no other or more goods and chattels in his bailiwick whereof he could cause to be made the residue of the said debt and damages, or any parcel thereof, and that the said *William* is dead: therefore we command you, that you take *John B.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us from the day of wherefoever, &c. to satisfy the said *John F.* 107*l.* 16*s.* the residue of the debt, damages, costs and charges aforesaid; and have there then this writ. Witness, &c.

[546]

Part levied.

WILLIAM and *Mary, &c.* To the sheriff of *New Castle upon Tyne*, greeting: whereas we lately commanded our sheriffs of *London*, that they should take *John Pye*, otherwise called, &c. if he should be found in their bailiwick, and him safely keep, so that they might have his body before us at *Westminster* on a certain day now past, to satisfy *Venetia House* 500*l.* debt which the same *Venetia* had lately in our court before us at *Westminster* recovered against him, and also 40*s.* which to the same *Venetia* lately in our court before us at *Westminster* were adjudged for her damages which she had sustained, as well by reason of the detention of that debt, as for her costs and charges by her about her suit in that behalf expended, whereof he is convicted, as it appears to us on record, and whereof in our same court before us at *Westminster* it is considered, that the said *Venetia* may have her execution against the said *John* for the debt and damages aforesaid by the default of the said *John*; and our said sheriffs of *London* on that day returned to us, that the said *John* is not found in their bailiwick; whereupon on the part of the said *Venetia* in our court before us it is sufficiently testified, that the said *John* secretes himself, and runs up and down in your county: therefore we command you, that you take him, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on day next after to satisfy the said *Venetia* the debt and damages aforesaid; and have there then this writ. Witness, &c.

Testatum ca. sa.
in debt after a
seire facias.

WILLIAM, &c. To the sheriffs of *London*, greeting: we command you, that you take *A. B.* otherwise called &c. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on day next after (8 days between the *teste* and the return)

Ca. sa. in debt
against the prin-
cipal to warrant
a *seire facias*
against the bail.

to

to satisfy C. S. 100*l.* debt which the same C. hath lately in our court before us at *Westminster* recovered against him, and also 31*s.* which to the same C. in our court before us at *Westminster* aforesaid were adjudged for his damages which he had sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same S. is convicted, as it appears to us on record; and have there then this writ. Witnesses, &c.

In case.

WILLIAM and Mary, &c. To the sheriff of *Middlesex*, greeting: we command you, that you take T. B. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on _____ day next after _____ to satisfy *Randal Harwood* 16*l.* which the same *Randal* hath lately in our court before us at *Westminster* recovered against him for his damages which he had sustained, as well by reason of the non-performance of certain promises and assumptions by him the said T. to the same R. lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the same T. is convicted, as it appears to us on record; and have there then this writ. Witnesses, &c.

[547]

In covenant.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: we command you, that you take *Thomas E.* if he shall be found in your bailiwick; and him safely keep, so that you may have his body before us at *Westminster* on _____ day next after _____ to satisfy *Arthur Onslow*, esq; 36*l.* for his damages which he sustained, as well by reason of the breach of a certain covenant by him the said *Thomas* to the same *Arthur* lately made, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as it appears to us on record; and have, &c.

In trespass by original against the surviving defendants.

WILLIAM and Mary, &c. To the sheriff of *Middlesex*, greeting: we command you, that you take T. R. late of *London*, knt. J. E. late of, &c. if they shall be found in your bailiwick, and them safely keep, so that you may have their bodies before us from the day of _____ wheresoever, &c. to satisfy C. C. gent. 165*l.* which the same C. lately in our court before us at *Westminster* recovered against them and one T. F. late of *London*, knt. (which said T. F. afterwards died) for his damages which he sustained as well by reason of a certain trespass to the same C. by the said T. R. &c. together with the said T. F. now deceased lately done, as for his costs and charges by him about his suit in that behalf expended, whereof they are convicted, as it appears to us on record; and whereon in our same court before us at *Westminster* after the death of the said T. F. it is considered, that the said C. C. may have his execution against the said T. R. J. E. &c. for the damages, costs and

and charges aforesaid, by the default of them the said T. J. &c. And have there this writ. Witness, &c.

ANNE, &c. To the sheriff of *Middlesex*, greeting: we command you, that you take J. B. of *London*, gent. and J. D. of *London*, gent. the bail of Samuel A. otherwise called S. A. of *London*, merchant, if they shall be found in your bailiwick, and them safely keep, so that you may have their bodies before us at *Westminster* on day next after to satisfy S. C. 100*l.* debt which the same S. C. lately in the court of the lord William the Third, late king of *England*, before the late king himself at *Westminster* recovered against him the said Samuel, and also 3*1s.* which to the same Simon in the said court of the said late king were adjudged for his damages which he had sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same Samuel is convicted, as it appears to us on record; and whereon in our court before us at *Westminster* it is considered, that the said Simon may have his execution against the said J. B. and J. D. for the debt and damages aforesaid, according to the force, form and effect of a certain recognizance by them the said J. B. and J. D. in the said court of the said late king before the late king himself at *Westminster* for the said S. A. at the suit of the said S. C. in the suit aforesaid acknowledged, by the default of them the said J. B. and J. D. as it appears likewise to us on record; and have there then this writ. Witness, &c.

Against the bail in debt on a judgment recovered in the time of the late king.

Scire facias.

WILLIAM, &c. To the sheriff of *Northampton*, greeting: we command you, that you take John A. and M. his wife, administratrix of all and singular the goods and chattels, rights and credits, which belonged to S. M. the younger deceased, otherwise called S. M. the younger, of, &c. if they shall be found in your bailiwick, and them safely keep, so that you may have their bodies before us at *Westminster* on day next after to satisfy Letitia M. widow, executrix of the last will and testament of S. M. the elder, her late husband deceased, 400*l.* debt which the same Letitia lately in our court before us at *Westminster* recovered against them, and also 8*l.* which to the same Letitia in our same court before us at *Westminster* were adjudged for her damages which she sustained as well by reason of the detention of that debt, as for her costs and charges by her about her suit in that behalf expended, whereof the same John and Mary are convicted, as it appears to us on record; and have there then this writ. Witness, &c.

For an executrix against an administratrix in debt.

[548]

ANNE, &c. To the sheriff of *Middlesex*, greeting: we command you, that you take John G. gent. being one of the attornies of our court before us, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before

For an executrix against an attorney after a non-pros of a writ of error out of the exchequer for not transcribing.

Select Writs.

before us at *Westminster* on day next after to satisfy *Martha W.* widow, executrix of the last will and testament of *George W.* her late husband deceased, 112*l.* which the same *Martha W.* hath lately in the court of the lord *William* the Third, late king of *England, &c.* before the late king himself at *Westminster* recovered against him for her damages which she had sustained, as well by reason of the non-performance of certain promises and assumptions to the same *George* in his life-time by the said *John* made, as for her costs and charges by her about her suit in that behalf expended, whereof the same *John* is convicted, as it appears to us on record; and have there then this writ. Witnesses, *&c.*

Ca. fa. for an administratrix for the residue in case.

Recital of the *fi. fa.* in *London.*

The return.

Testatum fi. fa.

WILLIAM, &c. To the sheriffs of *London*, greeting: whereas we lately commanded you by our writ, that you should cause to be made of the goods and chattels of *Thomas B.* esq; in your bailiwick, 300*l.* 6*s.* which *Ruth W.* widow, administratrix of all and singular the goods and chattels, rights and credits, which belonged to *Robert W.* her late husband deceased, had lately in our court before us at *Westminster* recovered against him, as well by reason of the non-performance of a certain promise and assumption by him the said *Thomas* to the same *Ruth*, as administratrix to the said *Robert* lately made, as for her costs and charges by her about her suit in that behalf expended, whereof the said *Thomas* is convicted, as it appears to us on record, and that you should have that money before us at *Westminster* on a certain day now past to be paid to the said *Ruth* for the damages, costs and charges aforesaid (our writ of error and our writ of *superfedeas* thereon obtained in any wise notwithstanding;) and you on that day thereupon returned to us, that the said *Thomas* had no goods or chattels in your bailiwick whereof you could cause to be made the damages, costs and charges aforesaid, or any penny thereof; whereupon on the behalf of the said *Ruth* in our court before us at *Westminster* it was sufficiently testified, that the said *Thomas* had sufficient goods and chattels in the county of *Middlesex* whereof the sheriff of the county of *Middlesex* might cause to be made the damages, costs and charges aforesaid; whereupon we commanded the sheriff of the county of *Middlesex*, that he should cause to be made of the goods and chattels of the said *Thomas* in his bailiwick 300*l.* 6*s.* for the damages, costs and charges aforesaid, and that he should have that money before us at *Westminster* on day next after to be paid to the said *Ruth* for the damages, costs and charges aforesaid (our writ of error and our writ of *superfedeas* thereon obtained in any wise notwithstanding;) and our said sheriff of *Middlesex* on that day returned to us, that to make execution of the writ aforesaid to him directed, he had sent to the bailiff of the liberty of the dean and chapter of the collegiate church of *St. Peter Westminster*, who hath the full execution of all warrants,

The return.

rants, writs and precepts to him directed; which said bailiff, to wit, *R. Knipe*, esq; answered him thus: that of the goods and chattels of the said *Thomas B.* he had caused to be made 86*l.* 15*s.* parcel of the damages aforesaid, which said money before us at the day and place aforesaid he had ready, as he by the writ aforesaid was commanded, to be paid to the said *Ruth* in part of satisfaction of those damages; and he farther certified, that the said *Thomas* had no other or more goods or chattels in his bailiwick whereof he could cause to be made the residue of the damages aforesaid, or any part thereof: therefore we command you, that you take the said *Thomas*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on _____ day next after to satisfy the said *Ruth* 213*l.* 11*s.* the residue of the said 300*l.* 6*s.* the damages aforesaid; and have there then this writ. Witness *J. Holt*, knt. &c.

The within named *Thomas Butler* is not found in our bailiwick.

The answer of { *Barth. Gracedieu*, knt.
and
James Collet, knt. } sheriffs.

[549]

ANNE, &c. To the sheriff of *Middlesex*, greeting: we command you, that you take *Anne B.* late of *Westminster* in your county, widow, if she shall be found in your bailiwick, and her safely keep, so that you may have her body before us wheresoever, &c. to satisfy *Thomas J.* and *Mary* his wife, administratrix of the goods and chattels which belonged to *Silvan Rowley*, gent. deceased, who died intestate, 77*l.* which the same *Thomas J.* and *Mary* his wife lately in the court of the lord *William* the Third, late king of *England*, &c. before *Edward Nevil*, knt. *John Powel*, knt. and *J. B.* knt. justices of the same late king of the bench at *Westminster* recovered against her for their damages which they had sustained, as well by reason of the non-performance of a certain promise and assumption lately made to the said *Silvan* in his life-time by the said *Anne B.* as for their costs and charges by them about their suit in that behalf expended, whereof the said *Anne* is convicted, as by the inspection of the record and proceedings thereof, which the same late king caused to be brought into the court of the said late king before the late king himself, for certain causes of error, and which in our court before us, being in all things affirmed, now remaining appears to us on record, as also 14*l.* which to the same *Thomas* and *Mary* in our same court before us, according to the form of the statute in such case made and provided, were adjudged for their damages, costs and charges, which the said *Thomas* and *Mary* sustained by reason of the delay of the execution of the judgment aforesaid.

Ca. sa for an administratrix in case on a judgment affirmed on a writ of error in K. B. in the time of the late king.

3 H. 7. c. 10.
13 C. 2. c. 2.
§ 10.

said, by the pretence of the prosecution of the said writ of the same late king to correct error by the said *Anne* of and upon the premisses as aforesaid prosecuted, whereof the same *Anne* is likewise convicted, as it also appears to us on record; and have there this writ. Witness, &c.

Ca. fa. on a judgment affirmed where the liquela was in one king's reign and the judgment in another.

ANNE, &c. To the sheriffs of *London*, greeting: we command you, that you take *Samuel S.* late of, &c. *E. L.* late of, &c. *J. B.* late of, &c. and *W. K.* late of, &c. if if they shall be found in your bailiwick, and them safely keep, so that you may have their bodies before us from day of wheresoever, &c. to satisfy *George O.* 407 l. 10 s. which the same *George* by plea in the court of the lord *William* the Third, late king of *England*, &c. before *Thomas Trevor*, knt. and his companions, justices of the same late king of the bench at *Westminster*, and by the judgment of our court of the bench thereupon, before the said *Thomas Trevor*, knt. and his companions, our justices of the bench, hath recovered against them for his damages which he sustained, as well by reason of the non-performance of certain promises and assumptions by them the said *Samuel*, *E. J.* and *W.* to the same *George* lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Samuel*, *E. J.* and *W.* are convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court before us, for certain causes of error appears to us on record, as also 14 l. which to the same *George* in our said court before us, according to the form of the statute in such case lately made and provided, were adjudged for his damages, costs and charges, which the said *George* sustained by reason of the delay of the execution of the judgment aforesaid, on pretence of the prosecution of our said writ of error by the said *Samuel*, *E. J.* and *W.* of and upon the premisses as aforesaid prosecuted, whereof the said *Samuel*, *E. J.* and *W.* are likewise convicted, as it also appears to us on record; and have there this writ. Witness, &c.

3 H. 7. c. 10.
13 C. 2. c. 2.
§ 10.

Ca. fa. against the plaintiff on a judgment for the defendant on a special verdict in ejectment.
23 H. 8. c. 6.
8 El. c. 2.

ANNE, &c. To the sheriff of *Rutland*, greeting: we command you, that you take *W. J.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on day next after to satisfy *John C.* and *Elizabeth* his wife 27 l. which to the same *John* and *Elizabeth* his wife in our court before us at *Westminster*, according to the form of the statute thereof lately made and provided, were adjudged for their costs and charges by them sustained about their defence in a certain action of trespass and ejectment which the said *W. J.* in our court before us at *Westminster* against the said *J.* and *E.* his wife brought and prosecuted, whereof the same *W. J.* in our said court before us is convicted, as it appears to us on record; and have there then this writ. Witness *J. Holt*, knt. &c.

Capias si laicus.

JAMES, &c. To the sheriff of *Monmouth*, greeting: because *R. Ballard* of the town of *Monmouth* in your county, gent. 24th day of *June* in the 25th year of the reign of the lord *Charles* the Second, late king of *England*, &c. of blessed memory, and in the year of the Lord 1673, before *C. G.* esq; then mayor of the city of *Bristol*, keeper of the greater piece of the seal appointed for the sealing of statutes merchant within the city aforesaid, and *Robert A.* esq; assigned to take recognisances of the debts of merchants within the same city, keeper of the other piece of the same seal, acknowledged he owed to *Ralph Oliffe* late of the city of *Bristol* in the county of the city of *Bristol* aforesaid, vintner, deceased, 500*l.* of lawful money of *England*, which he ought to have paid to him on the feast of *All Saints* then next ensuing, and hath not yet paid them to the said *Ralph* in his life-time, nor to *John Oliffe*, vintner, the executor of the last will and testament of the said *Ralph*, after the death of the said *Ralph*, as it is said, we command you, that you take the body of the said *Richard*, (if he be lay) and him in our prison safely cause to be kept, until he hath fully satisfied the said executor the said 500*l.* and how you shall have performed this our commandment certify to us on the octave of *St. Hilary* by your letters sealed; and have there this writ. Witness ourself at *Westminster* 8th day of *December* in the 3d year of our reign.

Capias si laicus
out of chance-
ry, returnable
in K. B.

13 E. 1. c. 11

The within named *R. Ballard* is lay, and is not found in my bailiwick.

The answer of *A. B.* knt. sheriff.

THE sheriff was commanded, that he should take to wit. the body of *R. B.* of the town of *Monmouth* in the county of *Monmouth*, gent. if he was lay and had been found in his bailiwick, and him in the prison of the lord the king should safely cause to be kept, until he had fully satisfied *John Oliffe*, vintner, executor of the last will and testament of *R. O.* late of the city of *Bristol*, vintner, deceased, 500*l.* which the same *R. B.* 24th day of *June* in the 25th year of the reign of the lord *Charles* the Second, late king of *England*, &c. of blessed memory, and in the year of the Lord 1673, before *C. G.* esq; then mayor of the city of *Bristol*, and *R. A.* then clerk, assigned to take recognisances of the debts of merchants within the same city, acknowledged he owed to the same *Ralph*, which he ought to have paid him on the feast of *All Saints* then next ensuing, and hath not yet paid them either to the said *Ralph* in his life-time or to the said *John* the executor aforesaid after the

The entry
thereof on the
roll. H. 3 & 4.
Jac. 2.

death of him the said *Ralph*, &c. and how, &c. he should certify here on this day, to wit, on the octave of *St. Hilary* wheresoever, &c. And now here on this day comes the said *J. Oliffe* by *J. L.* his attorney, and produces here in court as well the letters testamentary of the said *R. Oliffe*, whereby it sufficiently appears to the court of the said lord the king here, that he the said *J. Oliffe* is executor of the will aforesaid, and thereof hath the administration, &c. as the recognisance aforesaid, which the debt aforesaid testifies in form aforesaid: and the sheriff now returns, that the said *R. B.* is lay, and is not found in his bailiwick; and upon this the said *J. Oliffe* prays the writ of the lord the king by the statute to the sheriff of the county aforesaid to be directed; and to him it is granted, &c. and how, &c. let the sheriff certify on the octave of the purification of the blessed *Mary*: the same day is given to the said *J. Oliffe*, &c.

[551]

The entry of a
capias si laicus,
extent, inquisition
and liberate
thereon.

Tvin. 1 *Ja.* 2.
Ro. 1032.

Somerſet, **T**HE sheriff was commanded, that he should take to wit. the body of *J. H.* of *K.* in the parish of *B.* in the county of *S.* gent. if he was lay, and had been found in his bailiwick, and him in the prison of the lord the king should safely keep, until he had fully satisfied *Anne Henley* of *C.* in the county of *D.* spinster, *Sarah Wallow* of *C.* aforesaid, widow, and *E. H.* of *C.* aforesaid, spinster, 80*l.* which the same *J.* on the first day of *July* in the 24th year of the reign of the lord *Charles* the Second, late king of *England*, before *J. P.* esq; then mayor of the city of *O.* and *S. J.* gent. then clerk of the same city, assigned to take recognisances of debts in the city aforesaid, acknowledged he owed to the said *A. S.* and *E.* which he ought to have paid to them on the feast of *St. Michael* the archangel then next ensuing, and which he hath not yet paid to them, as it is said; and how, &c. he should certify to the said lord the king on the morrow of the holy *Trinity*, wheresoever, &c. by his letters sealed, &c. And now here on this day come the said *A. S.* and *E.* by *J. L.* their attorney, and produce here in court the recognisance aforesaid, which the debt aforesaid in form aforesaid testifies, the date whereof is the day and year aboveſaid: and the sheriff now returns, that the said *J. H.* &c. And upon this the said *A. S.* and *E.* pray a writ by the statute to the sheriff of the county aforesaid to be directed; and to them it is granted; and how, &c. let the sheriff certify to the said lord the king from the day of *St. Michael* in three weeks, wheresoever, &c. On which day before the said lord the king at *Westminster* come the said *A. S.* and *E.* by their attorney aforesaid; and the sheriff of the said county of *S.* to wit, *W. F.* esq; now returns to the said lord the king a certain inquisition taken before him at *D.* in the county aforesaid, 14th day of *October* last past, by the oath of 12, &c. whereby it is found that the said *J. H.* in his life-time, to wit, on the first day of *July* in the 28th year of the reign of the lord *Charles* the

the Second, late king of *England*, &c. was ſeiſed in his demefne as of fee of and in a meſſuage lying and being at *T.* within the pariſh of *C.* in the county aforeſaid, of the clear yearly value in all iſſues, beſides reſpites, 20*l.* And it is farther found by the inquiſition aforeſaid, that the ſaid *J. H.* in his life-time, to wit, on the firſt day of *July* in the ſaid 28th year of the reign of *Charles* the Second, the late king aforeſaid, or ever after, had no other lands or tenements in his bailiwick, to the knowledge of the jurors of that inquiſition, which could in any manner be extended or appraiſed; which ſaid meſſuage he the ſaid ſheriff on the day of the caption of the inquiſition aforeſaid had cauſed to be delivered to the ſaid *A. S.* and *E.* by the price and extent aforeſaid; to hold to them and their aſſigns as their freehold, according to the form of the ſtatute aforeſaid, until they ſhall have thereout levied the debt aforeſaid, with their neceſſary and reaſonable damages and coſts, as in labours, ſuits, delays and expences.

Capias utlagatum.

[522]

WILLIAM, &c. To the ſheriff of *Monmouth*, greeting: we command you, that you do not omit on account of any liberty of your county, but by the oath of good and lawful men of your ſame county you diligently inquire what goods and chattels, lands and tenements, *J. E.* late of *Penny-clauth* in your county, gent. otherwiſe called, &c. hath or had in your bailiwick on *Thursday*, to wit, 21ſt day of *May* in the 8th year of our reign, or ever after, on which day he was outlawed at *Monmouth* in your county, to ſatiſfy *H. Probert*, eſq; late ſheriff of your county, 120*l.* debt which the ſame *H. P.* lately in our court and of our late queen now deceaſed, before our juſtices and our ſaid queen of the bench at *Weſtmiſter* recovered againſt him, and alſo 11*l.* which to the ſame *H. P.* in our ſame court were adjudged for his damages which he ſuſtained as well by reaſon of the detention of that debt, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſame *J. E.* is convicted, as by the inſpection of the record and proceedings thereof, which we lately cauſed to be brought into our court before us, by virtue of our certain writ and of our ſaid queen, to correct error by the ſaid *J. E.* of and upon the premiſſes proſecuted, and which in our court before us in all this affirmed now remaining appears to us on record, and likewiſe 8*l.* which to the ſame *Henry* in our ſame court before us, according to the form of the ſtatute in ſuch caſe made and provided, were adjudged for his damages, coſts and charges, which he ſuſtained by reaſon of the delay of execution

A ſpecial *capias utlagatum* after an outlawry on a judgment affirmed on a writ of error in *K. B.*

3 H. 7. c. 10.
13 C. 2. c. 2.
§ 10.

of the judgment aforesaid, on the pretence of the prosecution of the said writ of error by the said *J. E.* so as aforesaid prosecuted, as our then sheriff of *Monmouth* to us at *Westminster* on a certain day now past returned, and them by their oath cause to be extended and appraised, according to the true value of the same; and them which by that inquisition you shall find into our hands take, and cause safely to be kept, so that you may answer unto us for the true value and issues of the same; and they being so extended and appraised, what you shall have done therein certify to us on the morrow of the ascension of the Lord wheresoever we shall then be in *England*, distinctly and openly under your seal and the seals of those by whose oath you shall make that extent and appraisement: and because the same *J. E.* so outlawed secretes himself, and runs up and down in your county, in contempt of us and to the prejudice of our crown, as we have understood, we command you, that you take the said *John* wheresoever he shall happen to be found in your bailiwick, as well within liberties as without, and him safely keep, so that you may have his body before us at the said time wheresoever, &c. to do and receive what our court before us shall consider in this behalf; and have there this writ. Witness, &c.

[553]

Capias in withernam.

Capias in withernam.

WILLIAM, &c. To the sheriff of *Surry*, greeting; whereas we lately commanded you by our writ, that whereas *Thomas B.* gent. had been attached by our writ of second deliverance to be in our court before us to answer to *John S.* in a plea, why he took the cattle of him the said *John* and them unjustly detained, against surety and pledges; and the same *John S.* in our same court made default, whereby it was considered in our same court, that the said *Thomas B.* should go thereof without day, and that the said *John S.* and his pledges to prosecute should be in mercy; and that the said *Thomas B.* should have a return of the cattle aforesaid irreplegiab'e, and that you should without delay cause those cattle to be returned to the said *Thomas B.* to be detained by him irreplegiab'e for ever; and how you should execute that writ you should certify to us wheresoever we should then be in *England*: and you on that day returned, that the cattle aforesaid were eloin'd by the said *John S.* to places to you unknown, so that you could not return or deliver those cattle to the said *Thomas B.* as by the writ aforesaid you was commanded: therefore we command you, that as many cattle of him the said *John S.* to the value of the cattle aforesaid by him the said *Thomas B.* first taken you take in *withernam*, and them to the said *Thomas B.* deliver, to hold to him irreplegiab'e, until

until you can cause the cattle aforesaid first taken to be returned to the said *Thomas B.* and how, &c. and put by surety and safe pledges the said *John S.* that he be before us from the day of wheresoever we shall then be in *England*, to answer as well to us for the contempt, as to the said *Thomas B.* for his damages and injuries in this behalf done; and have here this writ.

Certiorari.

[554]

CHARLES the Second, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. To our trusty and well beloved *John Kelynge*, knt. our chief justice assigned to hold pleas before us, greeting: we being willing, for certain reasons, to be certified on the tenor of the record of a certain plaint which was in our court before you by bill, between *Dorothy Toone*, widow, and *Francis Theobald*, esq; late sheriff of the county of *Suffolk*, in a certain plea of trespass on the case, to the damage of the said *Dorothy* by the said *Francis* done, as it is said, and also of the rendition of the judgment in the same court in *Easter* term last against the said *Francis* in the plaint aforesaid of the plea of trespass on the case aforesaid, command you, that the tenor of the record and proceedings of the plea aforesaid, and of the judgment, with all things touching them, by whatever names the parties aforesaid in the plea aforesaid are called, you distinctly and openly without delay send to us in our chancery under your seal, and this writ. Witness ourself at *Westminster* 12th day of *July* in the 19th year of our reign.

Certiorari to the chief justice of *England* to certify the tenor of a record and judgment in *K. B.* into chancery.

Goldman.

The answer of *John Kelynge*, knt. the chief justice within specified: the tenor of record and proceedings of the plaint and judgment, whereof in the writ within written mention is made, with all things touching them, to the lord the king in his chancery, as by the writ aforesaid I am commanded, I send.

The answer of the chief justice.

Jo. Kelynge.

Pleas before the lord the king at *Westminster* of *Hilary* term in the 18th and 19th year of the reign of the lord *Charles the Second* now king of *England*, &c. Roll 958.

The tenor of the record.

Suffolk, **B**E it remember'd, that otherwise, to wit, in *Michaelmas* term last past before the lord the king at *Westminster* came *Dorothy Toone*, widow, by *J. S.* her attorney, and produced in the court of the said lord the king then there her certain bill against *Francis Theobald*, esq; late sheriff of the county

county of *Suffolk* aforesaid, in the custody of the marshal, &c. in a plea of trespass on the case (*so on the judgment to*) of increase adjudged; which said damages in the whole amount to 122*l*. And the said *Francis Theobald* in mercy, &c.

[555]
Certiorari to
certify the ad-
mission of an
infant by pro-
chein amy.

WILLIAM, &c. To *George Treby*, *knt.* our chief justice of the bench at *Westminster*, greeting: we being willing, for certain reasons, to be certified whether there is any record of the admission of *Thomas Pryor* to warrant his appearance as his *prochein amy* for *Richard Read*, otherwise *Covey*, against *Richard Waldron*, in a plea of trespass, assault and imprisonment, in our court and of our late queen deceased of the bench at *Westminster* inrolled on record of *Trinity* term in the 5th year of our reign and of our said late queen, or not, command you, that searching the records of the inrolment of the admission of infants to prosecute in the said court of the bench aforesaid by their *prochein amy* of the said *Trinity* term in the 5th year of our reign and of our said late queen, and what of the entry of that admission between the parties aforesaid you shall find, as fully and intirely as before you it remains, certify to us wheresoever, &c. without delay, together with this writ, that we may farther cause to be done therein what of right and according to the law and custom of our kingdom of *England* we shall see fit to be done. Witness *J. Holt*, *knt.* at *Westminster* 23d day of *April* in the 7th year of our reign.

The return.

By virtue of this writ to me directed, I do certify to the lord the king, that having searched the records of the entries of the admission of infants to prosecute in the within written court of the bench of the within written *Trinity* term in the 5th year of the reign of the lord the now king and of our late queen, I have in the same found an entry on record of a certain admission of the same *Thomas Pryor*, to warrant his appearance as *prochein amy* of the within written *Richard Read*, otherwise *Covey*, against the within written *Richard Waldron* in the plea within written; the tenor of which said record appears in a certain schedule to this writ annexed.

Geo. Treby.

Pleas inrolled at Westminster before G. Treby, knt. and his companions, justices of the lord and lady the king and queen of the bench of Trinity term in the 5th year of the reign of the lord and lady William and Mary, of England, Scotland, France and Ireland king and queen, defenders of the faith; &c. Roll 1165.

The admission.

Northampton, **I** T is granted by the court of the lord and lady to wit. the king and queen here, that *Thomas Pryor*, gent. may prosecute for *Richard Read*, otherwise *Covey*, who is under the age of 21 years, as the *prochein amy* of the same *Richard*, against

against *Richard Waldron* in a plea of trespass, assault and imprisonment, &c.

WILLIAM and *Mary*, by the grace of God, of *England, Scotland, France and Ireland* king and queen, defenders of the faith, &c. To our trusty and well beloved *John Holt*, knt. our chief justice assigned to hold pleas before us, greeting: because we are willing to be certified of a certain record of a declaration or bill between *Benjamin T.* and *Thomas K.* knt. late sheriff of the county of *Middlesex*, and *John C.* otherwise called *John C.* of the parish of *St. Clement Danes* in the county of *Middlesex*, of debt 40 *l.* which the same *Benjamin* and *Thomas* demand of the said *John*, as it is said, and of the leave to imparl to that declaration or bill, being in your custody of record, we command you, that searching the declaration or bills and imparlances between the parties aforesaid in our court before us of *Easter* term in the second year of our reign, being in your custody, what thereof in the same you shall find certify to us in the court of our exchequer chamber at *Westminster* without delay, together with this writ. Witness *Edward Nevil*, knt. at *Westminster* 16th day of *April* in the fourth year of our reign.

Otherwise to the chief justice of the K. B. to certify the bill and imparlance into the exchequer chamber.

The answer of John Holt, knt. the chief justice of the lord and lady the king and queen, assigned to hold pleas in the court of the said lord and lady the king and queen before the king and queen themselves.

[556]

BY virtue of this writ to me directed, I do certify to the lord and lady the king and queen within written, that the declaration or bills and imparlances in the court of the lord and lady the king and queen before the king and queen themselves, of *Easter* term in the second year of their reign, being in our custody of record being searched, there is not any declaration or bill between the parties within named in the plea within written in our custody of the said term filed, which to the said lord and lady the king and queen I can certify, as I am within commanded.

The answer of the chief justice.

J. Holt.

10 May 1692. I have searched,
and there is no declaration or
bill filed. *T. Bromfield.*

WILLIAM, &c. To our trusty and well beloved *John Holt*, knt. our chief justice, assigned to hold pleas in our court before us, greeting: because in the record and proceedings, and also in the rendition of the judgment between *Christopher Ashmead* and *Charles Ranger* the younger, of a plea which was in our court before us by bill, without our writ, between the said *Christopher Ashmead*, plaintiff, and the said *Charles Ranger* the younger and one *Edward Hort* now deceased, of a certain trespass

To certify the writ of inquiry:

27 El. c. 8.

trespafs by the said *Charles* and *Edward* to the said *Christopher* done, as it is said, a manifest error hath happened, to the great damage of him the said *Charles*, as we have by his complaint understood, the record and proceedings of which said judgment before our justices of the common bench, and the barons of the exchequer who are of the degree of the coif, to correct the errors in the same, according to the form of the statute of the 27th year of the lady *Elizabeth*, late queen of *England* thereof provided, into the court of the chamber of our exchequer aforesaid we have caused to be brought; and the said *Charles* appearing in the same court of exchequer chamber hath said, that no writ of inquiry of damages between the same *Christopher* and the said *Charles* in the plea aforesaid is filed of record, nor of record remains: and we being willing to be certified thereof in this behalf, command you, that our writs of inquiry of damages of our county of *Wills* of *Easter* term in the 12th year of our reign, being in your custody of record being searched, what of the writ of inquiry of damages aforesaid between the parties aforesaid in the plea aforesaid you shall find in your custody of record in the same, together with the return thereof, to our justices of the common bench, and to the barons of our exchequer who are of the degree of the coif, immediately into the exchequer chamber aforesaid you certify, together with this writ. Witnesses *E. Ward*, *knt.* at *Westminster* 10th day of *May* in the 13th year of our reign.

The answer of John Holt, knt. the chief justice within named.

The return.

THE files of the writs of inquiry of damages of *Easter* term within written being in my custody of record being searched, I do there find a certain writ of inquiry of damages between the parties within named in the plea within mentioned filed on record; which said writ, together with the return thereof, I do in a certain schedule to this writ annexed certify to the justices of the lord the king of the common bench, and the barons of the exchequer within named, as I am within commanded.

J. Holt.

Otherwise to
certify diminution
of words in
the record.

ANNE, &c. To our trusty and well beloved *T. Parker*, *knt.* our chief justice assigned to hold pleas before us, greeting: because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before us, by bill, between *George Baker* the elder and *James Campbell*, of a certain trespass on the case on the same *George* by the said *James* committed, as it is said, a manifest error hath happened, to the great damage of him the said *James*, as by his complaint we have understood: the record and proceedings of which said judgment before our justices of the common bench and the barons of the exchequer who are of the degree of the coif, to correct

rest the errors in the same, according to the form of the statute of the 27th year of the lady *Elizabeth*, late queen of *England*, &c. thereof made and provided, into the court of the chamber of our exchequer aforesaid we have caused to be brought: and because the same justices and barons, for certain reasons them especially moving before they proceed in this behalf, are willing to be certified and informed whether these words [of the non-performance of the first promise and assumption aforesaid] between these words [by reason] and these words [ought to recover] are inserted in the writ of inquiry of damages between the parties aforesaid in the plea aforesaid, or not; and whether these words [of the non-performance of the first promise and assumption aforesaid] between these words [as well by reason] and these words [as for his costs] are inserted in the same writ, or not; and whether this word [this] between this word [in] and this word [behalf] be omitted in the same writ, or not; and whether this word [that] between the same word [in] and the same word [behalf] is inserted, or not; and whether these words [and by reason of the non-performance of the second promise in the same writ likewise mentioned to one penny] between these words [eight pounds] and these words [and for his costs] are omitted in the inquisition to the same writ annexed, or not: therefore we command you, that our writs of inquiry of damages to the sheriffs of our city of *London* directed, and the inquisitions to those writs annexed and thereon taken, being filed of record in our court before us of *Trinity* term in the 10th year of our reign in your custody, being searched, what of the said words, so as aforesaid omitted and inserted in the same writ of inquiry of damages aforesaid, and in the inquisition aforesaid to the same writ annexed, you shall find, to the justices and barons aforesaid in the said court of exchequer chamber you without delay certify: and because the same justices and barons are willing to be farther certified, whether these words [and by reason of the non-performance of the second promise in the declaration aforesaid likewise mentioned to one penny] between these words [eight pounds] and these words [and for] are omitted in the record of the judgment between the parties aforesaid in the plea aforesaid, or not; and whether this word [those] between this word [for] and this word [costs] is inserted in the same record, or not; and whether this word [therefore] immediately before these words [it is considered] is inserted in the same record, or not; and whether these words [and upon this the same *George* freely here in court remits to the said *James* the said one penny by the inquisition aforesaid in form aforesaid found, by reason of the non-performance of the second promise, therefore the said *James* from the said one penny may be quit, and go thereof without day, &c. Therefore no respect being had to the said one penny above in form aforesaid remitted] between these words [eight pounds] and these words [therefore it is considered] are omitted in the same record, or not; and whether these words [the residue of the damages]

ages] between this word [*James*] and this word [aforesaid] are omitted in the same record, or not; and whether this word [damages] between the same word [*James*] and the same word [aforesaid] is inserted in the same record, or not: therefore we likewise command you, that the record of the judgment aforesaid between the parties aforesaid in the plea aforesaid of *Easter* term in the 10th year of our reign, roll 377. filed in our court, being in your custody, being searched, what of the said words in the same record, so as aforesaid omitted and inserted, you shall find, to the justices and barons aforesaid in the said court of exchequer chamber you likewise without delay certify, together with this writ. Witness *Thomas* lord *Trevor* at *Westminster* 23d day of *October* in the 12th year of our reign.

The return.

To the justices and barons within written: I certify that the writs of the lady the queen of inquiry of damages to the sheriffs of the city of *London* directed, and the inquisitions to those writs annexed and thereon taken in the court of the lady the queen before the queen herself of *Trinity* term in the 10th year of the reign of the said lady the queen, being in my custody of record, being searched, I do find that in the writ of inquiry of damages between the parties within written in the plea within written of record filed these words [of the non-performance of the first promise and assumption aforesaid] between these words [by reason] and these words [ought to recover] are inserted: I do likewise find in the same writ, that these words [of the non-performance of the first promise and assumption aforesaid] between these words [as well by reason] as these words [as for his costs] are inserted: I do farther find, that this word [this] between this word [in] and this word [behalf] is omitted in the same writ, and that this word [that] between the same word [in] and the same word [behalf] is inserted in the same writ: I find likewise in the inquisition to the same writ annexed, that these words [and by reason of the non-performance of the second promise in the same writ likewise mentioned to one penny] between these words [eight pounds] and these words [and for] wholly omitted: and I do farther certify to the justices and barons within specified, that the record of the judgment between the parties aforesaid in the plea aforesaid of *Easter* term in the 10th year of the reign of the said lady the queen, roll 377. being filed in the court of the said lady the queen before the queen herself in my custody, being searched, I do find that these words [and by reason of the non-performance of the second promise in the declaration aforesaid likewise mentioned to one penny] between these words [eight pounds] and these words [and for] intirely omitted in the same record: I likewise find that this word [those] between this word [for] and this word [costs] is inserted in the same record: I do farther find that this word [therefore] immediately before these words [it is considered] is inserted in the same record, and that these words [and upon this the same *George* freely here in court remits to the said *James* the said one penny by the inquisition aforesaid]

aforesaid in form aforesaid found, by reason of the non-performance of the said second promise, therefore the said *James* from the said one penny may be quit, and go thereof without day, &c. Therefore no respect being had to the said one penny above in form aforesaid remitted] between these words [eight pence] and these words [therefore it is considered] are wholly omitted in the same record; and also that these words [the residue of the damages] between this word [*James*] and this word [aforesaid] are omitted in the same record: I find lastly, that this word [damages] between the same word [*James*] and the same word [aforesaid] is inserted in the record aforesaid, as I am within commanded.

The answer of *Thomas Parker*, knt. the chief justice within mentioned.

T. Parker.

I do certify to the justices and barons within written, that the declaration or bills, being in my custody of record of the term and year within mentioned, being searched, there is not in the same any declaration or bill between the within named *Edward Rothe* and *Edward Browne* of a certain trespass on the case to the said *Edward Rothe* by the said *Edward Browne* done. Ex. *Tho. Bromfield.*

Return,
No bill filed.

J. Holt.

GEORGE, &c. To our trusty and well beloved *Peter King*, knt. our chief justice of the bench, greeting: we being willing, for certain reasons, to be certified whether *Edward C.* executor of the last will and testament of *Edward Cleve* his late father deceased, made *Henry W.* his attorney against *Thomas Smith*, gent. one of the attornies of our court of the bench, in a plea of trespass on the case, before you and your companions, our justices of the bench of record of *Hilary* term in the fourth year of our reign, or not, command you, that the rolls and other memorandums of the warrants of attorney of the county of *Somerset* of the said *Hilary* term in the fourth year of our reign aforesaid, being in your custody of record, being searched, what of the said warrant of attorney between the parties aforesaid in the plea aforesaid you shall find in the same, to us without delay wheresoever we shall then be in *England* you certify, together with this writ. Witnesses *J. Pratt*, knt. at *Westminster* 23d day of *October* in the sixth year of our reign.

Otherwise to
certify a warrant
of attorney,

Ventris.

The answer of *Peter King*, knt. the chief justice within named.

I do certify to the lord the king within written, that the rolls and other memorandums of the warrants of attorney of the county of *Somerset* of the term and year within written, being in my

The return.

my custody, being searched, I have not found in the same any warrant of attorney between the within named *Edward Cleve*, executor of the last will and testament of *Edward Cleve* his father lately deceased, and *Thomas Smith*, gent. one of the attorneys of the court of the said lord the king of the bench in the plea within mentioned.

P. King.

Certiorari to certify the original,
Pract. Reg. 251.

G E O R G E, &c. To our trusty and well beloved *George* earl of *Litchfield*, keeper of the writs and rolls of our court of the bench at *Westminster*, greeting: we being willing to be certified of a certain original writ in the city of *London* which issued out of our court returnable before the justices of the bench aforesaid, between *J. S.* and *W. S.* and *John B.* late of *London*, merchant, in a plea of trespass on the case, to the damage of 600*l.* command you, that the original writs to the sheriffs of *London* directed, between the parties aforesaid of *Trinity* term in the 7th year of our reign, being filed of record in your custody, being searched, what of the writ aforesaid you shall find, together with the return and indorsement of the same writ, as fully and intirely as it remains with you, to us without delay wherefoever we shall then be in *England* you certify, together with this writ. Witness *J. Pratt*, knt. &c.

[559]
Certiorari to the chief justice of the isle of *Ely* to certify diminution, and whether the record is falsely certified,
M. 7 W. 3.

W I L L I A M, &c. To *S. Lovell*, knt. our serjeant at law, our chief justice assigned to hold pleas within the isle of *Ely* in our county of *Cambridge*, greeting: because in the record and proceedings, and also in the rendition of the judgment of a plea which was before you in our court aforesaid, without our writ, between *William W.* and *Oliver S.* of a certain trespass on the case to the same *W.* by the said *O.* done, as it is said, a manifest error hath happened, to the great damage of him the said *O.* as by his complaint we have understood; and we have caused that record and proceedings to be brought before us to correct such error, and the said *O.* hath assigned errors in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, as we have understood: and farther on the behalf of the said *W. W.* we have understood, that in the record and proceedings aforesaid, so as aforesaid certified, and to us certified, it is falsely certified, to wit, in the declaration in the record and proceedings aforesaid certified, between the words (and yet is possessed) and the words (acres by estimation) falsely is certified the word (*semten*) when in that record is the word (seventeen); and also in another place of the same declaration between the words (near the said) and the word (acres) falsely also is certified the word (*semten*) when in that record is the word (seventeen); and also in another place of the same declaration between the words (usual course obstructed) and the words (so that) falsely is certified the word (stopped) when in that record is the word (stopped);

(stopped); and also in another place of the same declaration, between the words (by reason of the obstruction) and the words (aforesaid could not descend) falsely is certified the word (obstruction) when in that record is the word (stoppage): and whereas as we are informed it appears in that record remaining in your custody before you, that all the said words in that record sent to us are falsely certified in such manner as is aforesaid, therefore we command you, that the rolls of the entry of the declaration aforesaid, being in your custody, being searched, what of the false certificates aforesaid you shall find to us wheresoever, &c. you without delay certify, sending back this our writ. Witnesses, &c.

WILLIAM, &c. To our trusty and well beloved *John Holt*, *knt.* our chief justice assigned to hold pleas before us, greeting: because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before us by bill, between *H. E. knt.* and *J. T. knt.* sheriffs of the city of *London*, and *S. D.* of debt of 400 *l.* which the same *H.* and *J.* demand of the said *Stephen*, as it is said, a manifest error hath happened, to the great damage of the said *Stephen*, as by his complaint we have understood, the record and proceedings of which said judgment we have caused to be brought before our justices of the common bench, and the barons of our exchequer who are of the degree of the coif, to correct the errors in the same, according to the form of the statute of the 27th year of the lady *Elizabeth*, late queen of *England* thereof provided, into the chamber of our exchequer aforesaid; and the said *Stephen* appearing in the same exchequer chamber hath said, that where by the record aforesaid sent to the same justices and barons it appears, that the said *H.* and *J.* in *Easter* term in the first year of the reign of the lord and lady *William* and *Mary*, now king and queen of *England*, exhibited into the said court of the lord and lady the king and queen their bill against him the said *Stephen* in the plea aforesaid, and that he the said *Stephen* was in the custody of the marshal of the *Marshalsea* of the said lord and lady the king and queen before the king and queen themselves: nevertheless the same *Stephen* at any time before, or at the same time of the exhibition of the bill of them the said *H.* and *J.* was not in the custody of the marshal of the *Marshalsea* of the said court of the lord and lady the king and queen, neither was any bail ever filed for him the said *Stephen* in the same court, nor any such bill and the continuances thereon indorsed in our said court of the same term before us of record remaining; and where by the record aforesaid so as aforesaid sent it appears that the said *Stephen* constituted one *C. B.* his attorney against the said *H.* and *J.* in the plea aforesaid; nevertheless the said *Stephen* hath said, that the said *C. B.* had no warrant of attorney thereof on record filed: and we being willing to be certified of the premises aforesaid in this behalf, command you, that the files of the bails of the city of *London*, and of the bills of the said *Easter* term in the year above said

Certiorari to certify diminution of a bill, bail and warrant of attorney into the exchequer chamber.

27 El. c. 8.

abovesaid in your custody, being searched, and also the rolls and other memorandums of the warrants of attorney of the same term, in your custody of record likewise remaining, being searched, what of the said bail, bill and continuances thereon indorsed, and warrant of attorney aforesaid you shall find, to our justices of the common bench and the barons of the exchequer of the degree of the coif, immediately into the chamber of our exchequer aforesaid you certify, together with this writ. Witness, &c.

560]

The answer of John Holt, knt. the chief justice within named.

The return.

Having searched the files of bails of the city of London, and also of the bills of *Easter* term within written, being in my custody of record, I find no bail nor bill between the parties within written in the plea within specified filed on record, having searched likewise the rolls and other memorandums of the warrants of attorney of the same term between the parties within written, being likewise in my custody on record, I there find no warrant of attorney filed on record: and this I certify to the justices of the lord and lady the king and queen of the common bench and the barons of the exchequer within written, as I am commanded.

J. Holt.

Certiorari to Ireland to certify a bill and warrants of attorney.

WILLIAM, &c. To our trusty and well beloved counsellor *Richard P. knt.* our chief justice assigned to hold pleas in our court before us in our kingdom of *Ireland*, greeting: because in the record and proceedings, and also in the rendition of the judgment of a plea which was in the court of the lord *Charles* the Second, late king of *England*, before the said late king himself at the king's court in his kingdom of *Ireland*, by bill, between *James Shaen, knt.* and *Wentworth Fitzgerald* earl of *Kildare*, otherwise called *W. F.* earl of *Kildare* in the kingdom of *Ireland*, as well of a debt of 3000 *l.* which one *J. Shaen* in the same court recovered against him, as of 28 *s.* 2 *d.* which to the same *James* in the same court were adjudged for his damages which he had as well by reason of the detention of the debt aforesaid, as for his costs and charges by him about his suit in that behalf expended, as it is said, a manifest error hath happened, to the great damage of *John* now earl of *Kildare*, the son and heir of the said *W. F.* late earl of *Kildare*, as by his complaint we have understood, the record and proceedings of which said judgment we have caused to be brought before us in *England* to correct the errors in the same; and the said *John* earl of *Kildare* appearing in our court before us at *Westminster* hath said, that where by the record aforesaid before us sent it appears, that the said *J. Shaen* in *Easter* term in the 13th year of the reign of the lord *Charles* the Second, late king of *England*, *Scotland*, *France* and *Ireland*, &c. exhibited into the said court of the said late

late king before the late king himself, at the king's court in his kingdom of *Ireland*, his bill against the said *W. F.* earl of *K.* in the kingdom of *Ireland*, being in the custody of the marshal of the *Marshalsea* of the said late king before the late king himself in the plea aforesaid, yet no bill and continuances thereon indorsed in the plea aforesaid in the said court of the same term was or is filed and on record remaining; and where by the record aforesaid so as aforesaid sent it appears, that the said *J. Shaen*, knt. constituted *P. P.* his attorney against the said *Wentworth* earl of *Kildare* in the plea aforesaid; nevertheless the said *John* earl of *Kildare* hath said, that the said *P. P.* had no warrant of attorney therefore filed on record; and also by the record aforesaid so as aforesaid sent it appears, that the said *W. F.* earl of *Kildare*, constituted *J. K.* his attorney against the said *James Shaen*, knt. in the plea aforesaid; yet the said *John* earl of *K.* hath said, that the said *J. K.* had no warrant of attorney therefore filed on record: and we being willing to be certified of the premisses aforesaid in this behalf, command you, that you search the files of bills of the said *Easter* term in the 13th year of the reign of the said late lord king *Charles* the Second aforesaid, in your custody on record, and also the rolls and other memorandums of the warrants of attorney of the same term in your custody on record likewise remaining, and what of the said bill and continuances thereon indorsed, and warrants of attorney aforesaid you shall find, as fully and intirely as they remain in your custody to us without delay wheresoever we shall then be in *England* certify and send, together with this writ. Witness, &c.

I *John Pyne*, knt. the chief justice within named to the lord the king wheresoever, &c. do humbly certify, that searching the files of bills of *Easter* term within written, being in my custody on record, I there find no bill between the parties within written in the plea within written filed on record, searching also the rolls and other memorandums of warrants of attorney of the same term between the parties within written in the plea within written, being likewise in my custody on record, I there find no warrant of attorney of record filed.

The return.

R. Pyne.

ANNE, &c. To the steward and bailiffs of *Henry* earl of *Lempster*, lord of the manor of *Corbon* in the county of *North'ton*, greeting: being willing for certain reasons to be certified on a certain plaint in our court before you against *Samuel Rowlatt*, gent. at the suit of *George Shipley* in a plea of trespass on the case, we command you, that the plaint aforesaid as fully and intirely, with all things touching it, as it remains before you, by whatever names the same *S. R.* and *G. S.* may be called in the same, to us without delay, wheresoever we shall then be in *England*, you certify and send, together with this

[561]

Certiorari to read move a cause.

VOL. II.

Z

writ,

Select Writs.

writ, that we may farther cause to be done therein as of right we shall see fit to be done. Witness *J. Holt, knt. &c.*

To the *custos brevium* to certify an original.

WILLIAM, &c. To *W. T. esq;* the *custos brevium* of the bench, greeting: being willing, for certain reasons, to be certified of a certain original writ which issued out of our court of chancery, returnable before our justices of the bench aforesaid, against *Howell John Howell* late of the parish of *Crickhowell* in the county of *Brecon*, yeoman, at the suit of *Kynvyn Harry* and *Elizabeth* his wife, in a plea of trespass and assault, to the damage we command you, that you search the original writs of the county of *Monmouth*, of *Michaelmas* term in the 9th year of our reign, being in your custody of record, and what of that writ you shall find, together with the return of the same, as fully and intirely as it remains with you to us without delay wheresoever we shall then be in *England* certify, together with this writ. Witness *J. Holt, knt. &c.*

The answer of W. T. esq; the custos brevium within named.

The return.

By virtue of this writ to me directed, I do certify to the lord the king, that the original writs of the said lord the king of his county of *Monmouth* of *Michaelmas* term in the 9th year of his reign, being in my custody of record, being searched, there is a certain original writ in the plea within written between the parties within named in my custody of the said term filed; the tenor of which said writ, together with the return of the same, as fully and intirely as in my custody filed remaining, to the lord the king I certify as appears in a certain schedule to this writ annexed, as I am within commanded.

W. S.

The original.

WILLIAM, &c. To the sheriff of *Monmouth*, greeting: If *Kynvyn Harry* and *Elizabeth* his wife shall make you secure to prosecute their plaint then put by surety and safe pledges *Howell John Howell* late of *Crickhowell* in the county of *Brecon*, yeoman, that he be before our justices at *Westminster* from the day of *St. Michael* in three weeks, to shew why with force and arms on her the said *Elizabeth* at *Monmouth* he made an assault, and her beat, wounded and abused, so that her life was despaired of, and other outrages on her committed, to the great damage of them the said *Kynvyn* and *Elizabeth*, and against our peace; and have there the names of the pledges, and this writ. Witness *Thomas* archbishop of *Canterbury*, and the rest of the keepers and justices of the kingdom, at *Westminster* the fourth day of *October* in the ninth year of our reign.

Gillingham.

Pledges to prosecute { *John Doe,*
and
Richard Roe.

Th.

Seal Writts.

† 561

The within named *Howell John Howell* hath nothing in my bailiwick whereby he can be attached.

Theophilus Reynolds, esq; sheriff.

Consultation.

[562]

WILLIAM, &c. To the reverend and excellent man *Thomas B.* doctor of laws, of the reverend father in Christ *John* by divine permission lord bishop of *Chichester*, in and thro' the whole archdeanry of *Lewes* in the diocese of *Chichester*, official principal, or other judge in that behalf competent: *William G.* vicar of the vicarage of the church of *W.* in the county of *Sussex*, hath shewn to us, that whereas he by the name of *W. G.* vicar of the vicarage of *W.* in the county of *S.* had lately in the court christian before you impleaded one *John R.* by the name of *John R.* of *W.* aforesaid, yeoman, for this, that the said *W. G.* in the months of *September, October, &c.* (and so recite the suggestion) and the said *J. R.* hath lately prosecuted and caused to be directed to you our certain prohibition out of our court before our justices at *Westminster*, that you should not farther hold the plea aforesaid in the court christian aforesaid before you, or any thing farther in that behalf attempt, by pretence of which our said prohibition you have from thence hitherto delayed, and yet do delay farther to proceed in the said cause of subtraction of the tithes aforesaid in this behalf alledged, as we have understood, to the great damage of the said *W. G.* and to the manifest prejudice of the ecclesiastical liberty: wherefore the same *W.* hath in our court before our justices at *Westminster* humbly besought us to grant him our aid and assistance in this behalf; and we favourably consenting to the petition of him the said *W.* and being unwilling that the cognisance which to the ecclesiastical court in this behalf belongs should be farther delayed by such false and subtle assertions, because in our said court before our justices at *Westminster* it is in such manner proceeded, that it is considered by the same court that the said *W. G.* may have our writ of consultation to the court christian aforesaid, our said writ of prohibition aforesaid to the contrary thereof notwithstanding, whereof the said *J. R.* is convicted, as it appears to us on record: we therefore being unwilling that the said *W. G.* should be in any wise injured in this behalf, signify to you and command, that you may in that cause lawfully proceed, and farther do what you shall know to belong to the ecclesiastical court, our said prohibition to the contrary thereof before to you directed in any wise notwithstanding. Witness, &c.

Consultation upon a suggestion of a *modus* for tithes.

Consultation on
a suggestion that
the earl marshal
had not cogni-
fance of arms
born by a
knight.

Parl. Rep: 59.

69.

9 H. 3. c. 29.

3 R. 2. c. 25.

[563]

13 R. 2. c. 2.

ANNE, &c. To the right honorable *Henry* earl of *Bindon*, of the earl marshal of *England*, &c. by our approbation, deputy or vicegerent, or to his vicegerent or surrogate, or deputy or other judge of the court of honour whatever in this behalf competent, greeting: *James Collett*, knt. hath shewn to us in our court before us, that by the great charter of the liberties of *England* made at a parliament held at *Westminster* in the county of *Middlesex* in the 9th year of the reign of the lord *Henry* the Third, late king of *England*, it was and is ordained and established, that no freeman should be taken or imprisoned, or disseised of his freehold, or liberties or free customs, or be outlawed or exiled, or any otherwise destroyed, nor would the king pass upon him nor condemn him but by lawful judgment of his peers, or by law of the land, as in the said statute more fully was contained; and whereas also the said *James Collett* was a freeman of *England* in the kingdom of *Great Britain*, and ought to enjoy the free customs of *England*, and against the same ought not in any wise to be disquieted or molested: and whereas also in and by a certain statute made in a parliament in the 8th year of the reign of the lord *Richard* the Second, late king of *England*, &c. it was enacted, That all pleas and suits touching the common law should not then after be drawn or held by any means before the constable and marshal of *England*: and whereas also in and by another statute in a parliament held in the 13th year of the reign of the same late king, and by divers other laws and statutes of *England*, it is provided, that to the constable and marshal it pertaineth to have cognisance of contracts touching deeds of arms and war out of the realm, and also of things that touch war within the realm, which cannot be determined nor discussed by the common law: and whereas the court having cognisance of contracts touching deeds of arms and war, ought only to be held before the constable and marshal of *England*, and not before the marshal only: and whereas also the court aforesaid by the law of the land ought to be held before the constable and marshal of *England*, and not before the deputy or vicegerent of such deputy of them, or either of them: and whereas also no freeman of *England* by the laws of *England* ought to be attached by his body, or detained in custody until he shall give surety to answer or obey any order or decree in the said court of honour, and the cognisance of all pleas and complaints of and concerning the painting and use of any coats of arms upon chariots, or otherwise to the prejudice or damage of any subject of *England*, or otherwise, to the common law, and not to any court of honour, rightly and justly belongs: nevertheless one *Nathaniel Lloyd*, doctor of laws, our advocate in the court of honour, contriving and intending the said *James*, against the laws of the land, unjustly to oppress and aggrieve, caused him the said *James* to be cited, to wit, at *Westminster* in the county of *Middlesex* aforesaid, that he should be before you to answer to certain

certain articles or heads concerning his contempt of the jurisdiction and authority of the court of honour aforesaid, and of the law of arms, and especially in bearing, usurping, shewing and making use of arms and coats of arms, as the arms and family coats of arms of him the said *James*, and farther to do and receive what should be just in that behalf; and also thereupon procured a certain decree to attach and detain him the said *James* in custody until he should put in surety in 50*l.* and in case he should not put in such surety on or before, &c. On which day of the appearance of the said *James* the said *Nathaniel* exhibited, or caused to be exhibited in the said court of honour, certain articles against the said *James* in these words following, to wit, In the name of God, *amen* : We *Henry* earl of *Bindon*, of the lord marshal of *England*, &c. by royal approbation, deputy or vicegerent, to you Sir *James Collett* of *London*, knt. the within written articles concerning the contempt as well of our jurisdiction and authority, as of the duty and law of arms, and especially in bearing, usurping, making use of and publickly shewing arms, coats of arms and a crest, as your proper arms, coats of arms and crest, which to you in no manner did belong, nor do belong, and which by the law of arms you could not nor can bear, at the promotion of the reverend *Nathaniel Lloyd*, doctor of laws in our court of honour, our advocate royal; we object and articulate as follows, to wit, *imprimis*, we object to you and articulate, that of right and by the law of arms no subject of this kingdom of *England*, of what estate, degree or condition soever he shall be, ought to assume to himself, or bear arms, or coats of arms, or a crest, unless he has them, or ought to have them, by the right of his ancestors, or by the gift of some person having sufficient power for that purpose; and we object jointly and severally, and of every one. *Item*, we object and articulate, that you the said Sir *James Collett* never had, nor have, any arms, coats of arms or a crest, to you or your family lawfully belonging, at least the arms, coats of arms and crest within described, to you and your ancestors did never lawfully belong, nor do belong; and we object as above. *Item*, we object and articulate, that notwithstanding the premises but they being true, you the said Sir *James Collett*, well knowing the premises, in the months of *December*, *January*, *February* and *March*, in the year of the Lord 1706, and also in the months of *March*, *April* and *May*, in the year of the Lord 1707 now current, and in every of them months, more than one or some, the arms, coats of arms and crest of the form in the shield of arms hereto annexed within described, to wit, sable on a chevron, between three hinds passant argent, as many amulets of the field, the crest a hind passant argent, as your proper family arms, coats of arms and crest, in fact on your chariot on both sides caused to be painted, and them for your arms, coats of arms and crest, to you and your family proper,

[564]

proper, and to you and your family lawfully belonging, on both sides to be born and shewn commanded, at least permitted, in all things, nevertheless, unjustly, and without any right and authority, and in contempt of our jurisdiction and authority, and the duty and law of arms, and to the intolerable injury of the nobility and gentry of this famous kingdom of *England*; we object nevertheless of every other time, &c. and we object as above. *Item*, we object and articulate, that you the said Sir *James Collett* was and are of the city of *London*, and to the jurisdiction of our court of honour subject and liable; and we object as above. *Item*, we object and articulate, that of and upon the premises, &c. *Item*, we object that the premises, &c. And altho' the said *James* all and singular the premises above mentioned before us in his defence against any other proceedings on the articles aforesaid hath pleaded and alledged; nevertheless the same *Nathaniel* him the said *James* by colour of the premises to aggrieve and oppress, your definitive sentence of and upon the premises did endeavour to obtain, in contempt of us, and to the manifest disinheritorship of our royal crown, and against the form and effect of the laws and statutes aforesaid, and to the damage and prejudice of him the said *James*: we believing and giving credit to the suggestion of the said *James C.* in this behalf, did on the petition of him the said *James C.* grant our prohibition, and cause it to be directed to you, to prohibit you that you should not attempt to hold or prosecute the plea aforesaid in the same court of honour before you against him the said *James*, by virtue of which our said prohibition in the plea aforesaid before you against the said *James C.* you have from thence desisted, and yet do desist farther to proceed, as by the report of the said *Nathaniel L.* we have lately in our court before us at *Westminster* understood: and because on the examination of the suggestion aforesaid in our court before us at *Westminster* in this behalf it is sufficiently manifest and appears on record, that the suggestion aforesaid is insufficient in law to preclude him the said *Nathaniel* from having our writ of consultation: we therefore being willing that justice should be done to the parties aforesaid (as the law requires) signify to you that you may lawfully proceed in the cause aforesaid, and farther do what you shall know to belong to the court of honour, our said prohibition to the contrary thereof before directed in any wise notwithstanding. Witness, &c.

Diminution.

CHARLES, &c. To our trusty and beloved *Orlando B.* knight and baron, our chief justice of the bench, greeting: whereas we have lately by the complaint of *Thomas A.* understood, that in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before you and your companions, then our justices of the bench, by our writ, between *Francis B.* the younger, plaintiff, and the said *Thomas A.* in a plea of breach of covenant, a manifest error hath happened, to the great damage of him the said *Thomas*, and we have caused those record and proceedings to be brought before us to correct such error; and the said *Thomas A.* appearing in our court before us hath said, that the record aforesaid before us sent is diminished, because the record of the continuance of the proceedings in the plea aforesaid on the original writ between the parties aforesaid in the plea aforesaid, from the octave of the purification of the blessed *Mary* in the 15th year of our reign until *Easter* term, to wit, from the day of *Easter* in one month in the 15th year of our reign aforesaid, and of the declaration of the said *Francis B.* the younger aforesaid, exhibited into our same court of the bench in the same *Easter* term against the said *Thomas A.* in the plea aforesaid, and of the imparlance to the declaration of the said *Francis B.* the younger to the said *Thomas A.* thereon granted, yet remaining on record in our same court of the bench of the several terms aforesaid respectively in your custody, are not yet certified to us; and the same *Thomas A.* hath prayed our writ to be directed to you, to certify more fully the truth thereof; and it was granted him: therefore we command you, that you search the rolls and records remaining in your custody of the several terms aforesaid; and if it be so, then the record of the continuances of the proceedings on the original writ aforesaid between the parties aforesaid in the plea aforesaid, from the octave of the purification of the blessed *Mary* in the 15th year of our reign aforesaid until *Easter* term, to wit, from the day of *Easter* in one month in the same term in the 15th year of our reign aforesaid, and also the record of the declaration of the said *Francis B.* the younger aforesaid, exhibited into our same court of the bench in the same *Easter* term against the said *Thomas A.* in the plea aforesaid, and of the imparlance to that declaration to the said *Thomas A.* granted, to us without delay wheresoever we shall then be in *England* you certify, together with this writ. Witness *J. Holt, &c.*

Writ of diminution to the chief justice of C. B. to certify the continuances and imparlance in K. B.

Distringas.

A *distringas* in
debt in Middle-
sex.

13 E. 1. c. 30.
12 E. 2. c. 4.
18 El. c. 12.
12 Geo. c. 31.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting;
we command you, that you distrain *John G.* of *Westminster*, gent. (*so name all the jury returned in the panel*) the jurors summoned in our court before us, between *Samuel D.* gent. plaintiff, and *John A.* esq; defendant, by all their lands and chattels in your bailiwick, so that neither they, nor any one by them, lay hands on them until you shall have other command from us for it; and that of the issues of the same you answer unto us, so that you may have their bodies before us at *Westminster* on *Tuesday* next after three weeks of the holy *Trinity*, or before our trusty and well beloved *John Holt*, knt. our chief justice assigned to hold pleas in our court before us, if he shall first come on [if the cause be tried in term, this is the day after the trial; if out of term, then it must be the first day of the next term] at *Westminster* in the great hall of pleas there, by the form of the statute, &c. to make a certain jury of the country between the parties aforesaid in a plea of debt, and to hear their judgment for their former defaults; and have there then the names of that jury, and this writ. Witness *J. Holt*, knt. at *Westminster* day of in the 11th year of our reign.

If in *London*, then, if he shall first come on, &c. at *Guildhall, London*, by the form of the statute, &c.

If the record be a *remanet*, then the *jurata* and *distringas* must be alter'd accordingly.

If at the assises [so that you may have their bodies before us at *Westminster* on] the first day of the subsequent term, or before our justices assigned to take assises in your county, if they shall first come on [the day of the assises] at *L.* in your county aforesaid, by the form of the statute, &c.

If in replevin, in a plea of taking and unjust detention of cattle, or of goods and chattels.

A *distringas* on
an issue in a
writ of error to
try if the plain-
tiff died before
the trial of the
issue.

ANNE, &c. To the sheriff of *Suffex*, greeting: we com-
mand you, that you distrain *Stephen B.* of *Lindfield*, gent.
&c. (*so recite all the jury returned in the panel to*) and that
of the issues of the same you answer unto us, so that you may
have their bodies before us at *Westminster* on *Monday* next after
three weeks of *St. Michael*, or before our justices assigned to
take assises in your county, if they shall first come on *Monday*
17 day of *July* at *East Grinstead* in your county aforesaid, by the
form of the statute, &c. to recognize on their oath, whether
the said *John W.* died before the trial of the issue aforesaid in
the record aforesaid between the parties aforesaid joined, as the
said

Select Writs.

† 566

said *John O.* and *Nathaniel R.* have alledged, or not, and to hear their judgment for their former defaults; and have there the names of the jury, and this writ. Witness *T. Parker*, knt. at *Westminster* 28th day of *June* in the 9th year of our reign.

[567]

A *distingas* to return a writ of *elegit*.

WILLIAM the Third, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. To the sheriff of *Middlesex* greeting: we command you, that you distrain *William G.* knt. and *Joseph S.* knt. late sheriff of your county by all their lands and chattels in your bailiwick, so that neither they, nor any by them, lay hands on them until you shall have other command from us for it; and that of the issues of the same you answer unto us, so that he may return our writ of *elegit* out of our court before us at *Westminster* prosecuted, and to the same *William* and *Joseph*, then sheriff of your county aforesaid, delivered against *Milo G.* of the parish of *St. Martin in the fields* in your county, cutler, at the suit of *John T.* gent. for 860*l.* debt, and 33*s.* for damages, returnable before us at *Westminster* on *Wednesday* next after three weeks of the holy *Trinity* in the 11th year of our reign, to us in our said court before us at *Westminster* on *Thursday* next after three weeks of *Easter*; and have there then this writ. Witness *J. Holt*, knt. at *Westminster* 7th day of *May* in the 13th year of our reign.

Holt. Coleman.

The manucaptors of the within named sheriff, { *John Doe,*
and
Richard Roe,
Issues 256*l.*

The answer of { *Robert Beachcraft*, knt.
and
H. Furnese, knt. } sheriff,

WILLIAM, &c. To the sheriff of *Suffex*, greeting: *Habeas corpora jurator' in C. B. in prohibition.*
we command you, that you have before our justices at *Westminster* from the day of *Easter* in 15 days, or before our justices assigned to take assises in your county, by the form of the statute thereof provided, if they shall first come on *Friday* the fourth day of *April* at *East Grinstead* in your county, the bodies of *Thomas S.* the younger of *Mountfield* (naming all the jury returned in the panel) jurors summoned in our court before our justices at *Westminster* between *Edward B.* who as well, &c. plaintiff, and *John Doddridge*, clerk, rector of the rectory of the parochial church of *Whatlington* in your county, defendant, in a plea of prohibition to make that jury; and have there this writ. Witness *E. Nevill* at *Westminster* 12th day of *February* in the 12th year of our reign,

Windham.

*Distingas in
Middlesex in a
scire facias in
debt.*

G E O R G E, &c. To the sheriff of *Middlesex*, greeting: we command you, that you distrain *A. B. &c.* jurors summoned in our court before us between *Grace B.* widow, surviving executrix of *James B.* esq; deceased, plaintiff, and *George B.* esq; defendant, by all their lands and chattels in your bailiwick, so that neither they, nor any by them, lay hands to them until you shall have other command from us for it; and that of the issues of the same you answer to us, so that you may have their bodies before us at *Westminster* on day next after or before our trusty and beloved *John P.* kn. our chief justice assigned to hold pleas in our court before us, if he shall first come on day next after at *Westminster* in the great hall of pleas there, by the form of the statute, &c. to make a certain jury of the country between the parties aforesaid in a plea of debt whereon a *scire facias*, &c. and to hear their judgment for their former defaults; and have there then the names of that jury, and this writ. Witness *John Pratt*, kn. at *Westminster* the fourth day of *May* in the 6th year of our reign.
Ventris.

[568]

*A distingas at
the assises in
case.*

W I L L I A M, &c. To the sheriff of *Kent*, greeting: we command you, that you distrain *A. B. &c.* jurors summoned in our court before us between *James B.* plaintiff, and *John W.* gent. defendant, by all their lands and chattels in your bailiwick [unto] to make a certain jury of the country between the parties aforesaid in a plea of trespass on the case, and to hear their judgment for their former defaults; and have there then the names of that jury, and this writ. Witness, &c.

*A distingas to
return a latitat.*

W I L L I A M, &c. To the sheriff of *Cambridge*, greeting: we command you, that you distrain *William E.* esq; late sheriff of your county, by all his lands and chattels in your bailiwick, so that neither he, nor any by him, lay hands to them until you shall have other command from us for it; and that of the issues of the same you answer to us, so that he may have the body of *Thomas B.* by him taken and in our prison under his custody detained, as by his return to us by him formerly sent he hath charged himself before us at *Westminster* on day next after to answer to *Humphry B.* in a plea of trespass, and also to the bill of the said *Humphry* against the said *Thomas D.* for 30 l. upon promise, according to the custom of our court before us to be exhibited; and have there then this writ. Witness *J. Holt*, &c.

*A distingas for
a view.*

A N N E, &c. To the sheriff of *Suffex*, greeting: we command you, that you distrain *W. A.* of (and so recite the whole panel) jurors summoned in our court before us between the right honourable *Richard* earl of *Scarborough*, plain-
tiff,

tiff, and *Edward S.* defendant, by all their lands and chattels in your bailiwick, so that neither they, nor any person by them, lay hands to them until you shall have other command from us for it; and that of the issues of the same you answer to us, so that you may have their bodies before us at *Westminster* on *Wednesday* next after three weeks of *St. Michael*, or before our justices assigned to take assises in your county, if they shall first come on *Monday* the second day of *September* at *Horsbom* in the county aforesaid, by the form of the statute in such case thereof lately made and provided, to make a certain jury of the country between the parties aforesaid in a plea of trespass, and to hear their judgment for their former defaults; and in the mean time, according to the form of the statute in such case lately made and provided, we command you, that you have six of the first twelve jurors, or any greater number of them, to the place in question, on the 20th day of *August* next ensuing, who then shall have a view of the same place in the presence of *J. M.* on the part of the plaintiff, and of *W. F.* on the part of the defendant, appointed by our court before us to shew the place aforesaid to the jurors aforesaid; and how you shall have executed this our command, to us at *Westminster* on the said day, or to our justices at the assises aforesaid, cause to be returned, remitting to us this our writ. Witness *J. Holt*, knt. at *Westminster* 12th day of *June* in the fifth year of our reign.

13 E. 1. c. 30.

4 Ann. c. 16.
§ 8.

Holt. Coleman.

I do certify to the justices of the lady the queen, that on the 20th day of *August* within written, I caused *Thomas M.* knt. *R. P.* esq; *R. O.* esq; *W. P.* esq; *J. M.* esq; and *T. E.* esq; being six of the first jurors within named, to have a view of the place in question in the presence of *J. M.* on the part of the plaintiff, and of *W. F.* on the part of the defendant, appointed by the court within written to shew the place aforesaid to the jurors aforesaid, according to the form of the statute in such case thereof lately made and provided, as I am within commanded. The residue of the execution of this writ appears in a certain panel to this writ annexed.

The return.

J. Shelley, esq; sheriff.

ANNE, &c. To the sheriff of *Northumberland*, greeting: we command you, that you distrain, &c. jurors summoned in our court before us at *Westminster* between *E. W.* widow, who was the wife of *Henry W.* late of, &c. appellant, and *W. C.* late of, &c. by all their lands and chattels in your bailiwick, so that neither they, nor any person by them, lay hands on them until you shall have other command from us for it; and that of the issues of the same you answer to us, so that you may have their bodies before us from the day of *St. Michael* in three weeks, or before our justices assigned to take assises in your county, if they shall first come on *Monday* 18th day of *August* at

[569]

In an appeal of murder.

13 E. 1. c. 30.
12 E. 2. c. 4.

at the castle of *Newcastle upon Tyne* in your county, by the form of the statute in such case lately made and provided, to recognize on their oath, whether the said *William* is guilty of the death of the said *Henry W.* the late husband of the said *Elizabeth*, whereof the same *Elizabeth* him the said *W. C.* in our court before us hath appealed, or not, and to hear thereof their judgment for their former default; and have there then this writ. Witness *T. Parker*, knt. at *Westminster* 7th day of *July* in the 11th year of our reign.

To return a *latitat.*

WILLIAM, &c. To the sheriff of *Suffex*, greeting: we command you, that you distrain *H. Y.* esq; late sheriff of your county, by all his lands and chattels, so that neither he, nor any person by him, lay hands on them until you shall have other command from us for it; and that of the issues of the same you answer to us, so that he return our writ of *latitat.* out of our court before us at *Westminster* prosecuted, and to the same *Henry*, then sheriff of your county aforesaid, delivered against *R. L.* at the suit of *E. S.* in a plea of trespass, and also of the bill of him the said *Edward* against him the said *R.* for 45*l.* upon promise, according to the custom of our court aforesaid before us to be exhibited, returnable before us at *Westminster* on day next after to us in our said court before us at *Westminster* on day next after and have there then this writ. Witness *J. Holt*, knt. at *Westminster* 28th day of *November* in the fourth year of our reign.

To answer in case against an earl by original.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: we command you, that you distrain *John* earl of *Bath*, by all his lands and chattels in your bailiwick, so that neither he, nor any person by him, lay hands on them until you shall have other command from us for it; and that of the issues of the same you answer to us, so that he be before us on wheresoever we shall then be in *England*, to answer to *William H.* executor of the last will of *William H.* in a plea, why whereas the said earl on the first day of *May* in the 10th year of our reign at *Westminster* in your county was indebted to the said *William* in his life-time in 467*l.* 1*s.* of lawful money of *England*, for sundry goods and merchandizes by him the said *William* the testator to the same earl, and at the special instance and request of him the said earl before there sold and delivered; and the said earl being so therein indebted, in consideration thereof assumed upon himself, and to the same *William* the testator then and there faithfully promised, that he the said earl the said 467*l.* 1*s.* to the said *William* the testator, when he should be thereto after required, would well and truly pay and satisfy: and whereas also the said *William* the testator afterwards, to wit, the same day and year aforesaid, at *Westminster* aforesaid, at the special instance and request of him the said earl, had sold and delivered

vered to him the said earl fundry other goods and merchandizes; the same earl then and there in consideration thereof assumed upon himself, and to the said *William* the testator then and there faithfully promised, that he the same earl so much money as he the said *William* the testator therefore reasonably deserved to have, to the same *William* the testator, when he should be thereto after required, would well and truly pay and satisfy: and the same *William* the now plaintiff in fact says, that he the same *William* the testator in his life-time therefore reasonably deserved to have of the same earl another sum of 467 l. 1s. of like money of *England*; and thereof the said *William* the testator in his life-time afterwards, to wit, the same day and year abovesaid, at *Westminster* abovesaid in the county abovesaid, to the same earl gave notice: nevertheless the said earl his several promises and assumptions abovesaid to the same *William* in his life-time in form abovesaid made not regarding, the said several sums of money, or any penny thereof, to the said *William* the testator in his life-time, or to the said *William* the now plaintiff, after the death of the said *William* the testator, hath not yet paid, nor him for the same hitherto in any wise satisfied, altho' the same earl afterwards, to wit, on the first day of *August* in the 10th year abovesaid, at *Westminster* abovesaid in the county abovesaid, by the said *William* the testator in his life-time was required to do it: and altho' also the same earl afterwards, to wit, on the first day of *April* in the 10th year of our reign, at *Westminster* abovesaid in the county abovesaid, by him the said *William* the now plaintiff, after the death of the said *William* the testator, was likewise required to do it; but the said earl those sums to the same *William* the testator in his life-time, or to the said *William* the now plaintiff, after the death of the said *William* the testator, yet to pay, or for the same hitherto in any wise to satisfy hath altogether refused, and yet doth refuse, to the damage of him the said *William* 400 l. and to hear thereof his judgment for his former defaults; and have there this writ. Witness *J. Holt*, knt. at *Westminster* day of in the year of our reign.

[570]

The manucaptors of the within { *John Doe*,
named *John* earl of *Bath*, and
{ *Richard Roe*.
Issues 40 s.

The answer of { *Basil Firebrace*, knt.
and
{ *John Parsons*, knt. } sheriff.

ANNE, &c. To the sheriff of *Huntington*, greeting: we command you, that you distrain *Thomas K. of Alconbury* (and so name all the jurors in the panel) jurors summoned in our court before us between *Richard S. gent.* who as well for us as for

In prohibition for a trial at the assizes.

13 E. 1. c. 30.
12 E. 2. c. 4.

for himself in this behalf prosecutes, plaintiff, and *John A. clerk*, vicar of the vicarage of *Hemingford Gray* in your county, defendant, by all their lands and chattels in your bailiwick, so that neither they, nor any person by them, lay hands on them until you shall have other command from us for it; and that of the issues of the same you answer to us, so that you may have their bodies before us at *Westminster* on day next after or before our justices assigned to take assises in your county, if they shall first come on at the town of *Huntington* in your county, by the form of the statute, &c. to make a certain jury of the country between the parties aforesaid in a plea of trespass and contempt, because he prosecuted in the court christian after our prohibition to him first to the contrary thereof directed and delivered, and to hear thereof their judgment for their former defaults; and have, &c.

For a trial at
bar.

WILLIAM, &c. To the sheriff of *Worcester*, greeting: we command you, that you distrain *Charles L. of Hagley, bart. Thomas R. of Roufelench, bart.* (and so name all the jurors) jurors summoned in our court before us at *Westminster* between *Robert S. gent. plaintiff, and Edward W. gent. and George H. defendants*, by all their lands and chattels in your bailiwick, so that neither they, nor any person by them, lay hands on them until you shall have other command from us for it; and that of the issues of the same you answer to us, so that you may have their bodies before us at *Westminster* on *Wednesday* next after to make a certain jury of the country between the parties aforesaid in a plea of trespass on the case, and to hear thereof their judgment for their many defaults; and have there then the names of those jurors, and this writ. Witness *J. Holt, knt.* at *Westminster* day of in the year of our reign.

Holt. Coleman.

[571]

Elegit.

Elegit for an administratrix in debt after judgment affirmed in the exchequer chamber.

ANNE, &c. To the sheriff of *Middlesex*, greeting: whereas *Mary D. spinster, administratrix* of all and singular the goods and chattels, rights and credits, which belonged to *Samuel D. deceased* at the time of his death who died intestate, as it is said, lately in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court hath recovered against *Edward E. otherwise called Edw. E. of the parish of St. Andrew, Holborn, gent. 200 l. debt, and also 12 l. 12 s. for her damages* which she sustained as well by reason of the detention of that debt, as for her costs and charges by her about

about her suit in that behalf expended; whereof the same *Edward* is convicted, as it appears to us on record, as also 10 l. which to the same *Mary* in the court of the chamber of our exchequer at *Westminster* before our justices of the bench and the barons of our exchequer of the degree of the coif there, according to the form of the statute lately made and provided, were adjudged for her damages, costs and charges which she had by reason of the delay of the execution of the judgment aforesaid, on the pretence of the prosecution of our certain writ of error by him the said *Edward* of and upon the judgment aforesaid prosecuted, whereon that judgment was afterwards affirmed, and whereof the same *Edward* is convicted, as by the inspection of the record and proceedings thereof, out of the court of exchequer chamber aforesaid, before us according to the form of the statute aforesaid remitted, and in our said court before us now remaining in all things affirmed, it likewise appears to us on record: and afterwards the said *Mary* came into our said court before us, and chose to be delivered to her all the goods and chattels of the said *Edward*, saving only his oxen and beasts of his plough, and likewise the one half of all the lands and tenements of the said *Edward* in your bailiwick, to hold to her the goods and chattels aforesaid as her proper goods and chattels, and also to hold the one half aforesaid to her and her assigns as her freehold according to the form of the statute thereof made and provided, until she shall have thereout fully levied the debt and damages aforesaid: therefore we command you, that you without delay cause to be delivered to the said *Mary* all the goods and chattels of the said *Edward* in your bailiwick, saving only his oxen and beasts of his plough, and likewise the one half of all the lands and tenements of the said *Edward* in your bailiwick of which the said *Edward*, and any person and persons in trust for the said *Edward*, on *Wednesday* next after 15 days of *Easter* in the 8th year of our reign, on which day the judgment aforesaid was given, or ever after, was or were seised, upon a reasonable price and extent, to hold to her the goods and chattels aforesaid as her proper goods and chattels, and also to hold the one half of the lands and tenements aforesaid as her freehold to her and her assigns, according to the form of the statute aforesaid, until she shall have thereout fully levied the debt and damages aforesaid; and how you shall have executed this our writ send to us at *Westminster* on day next after under your seal and the seals of those by whose oath you shall make that extent and appraisement, together with this writ. Witness *Thomas Parker*, knight. at *Westminster* 22d day of *May* in the 9th year of our reign.

27 El. c. 2.

13 E. 1. c. 18.

ANNE, &c. To the sheriff of *Carmarthen*, greeting: whereas *Benjamin B. gent.* and *Charles H. gent.* lately in the court of the lord *William the Third*, late king of *England*, before the late king himself at *Westminster*, by bill, without the writ of

[572]

Elegit after a *scire facias* on a judgment in debt in the late reign.

33 E. 1. c. 18.

the said late king, and by the judgment of the same court recovered against *Rowland G.* knt. otherwise called *Rowland G.* of the parish of *St. James* in the liberty of *Westminster*, knt. 900 *l.* debt, and also 63 *s.* for their damages which they sustained as well by reason of the detention of that debt; as for their costs and charges by them about their suit in that behalf expended, whereof the same *Rowland* is convicted, as it appears to us on record; and whereof in our court before us at *Westminster* it is considered, that the said *Benjamin B.* and *Charles H.* may have their execution against the said *Rowland* for the debt and damages aforesaid, by the default of him the said *Rowland*; and because the said *Benjamin* and *Charles* have come into our court at *Westminster*, and chose to be delivered to them all the goods and chattels of the said *Rowland*, saving only his oxen and beasts of his plough, and likewise the one half of all the lands and tenements of the said *Rowland*, and of any person or persons in trust for him the said *Rowland* in your bailiwick, to hold the goods and chattels aforesaid as their proper goods and chattels, and also to hold the one half aforesaid to them and their assigns as their freehold, according to the form of the statute thereof made and provided, until they shall have thereout fully levied the debt and damages aforesaid: therefore we command you, that without delay you cause to be delivered to the said *Benjamin* and *Charles* all the goods and chattels of the said *Rowland* in your bailiwick, saving only his oxen and beasts of his plough, and also the one half of all the lands and tenements of the said *Rowland* in your bailiwick, of which the said *Rowland* and any person or persons in trust for him the said *Rowland* on day next after in the 12th year of the reign of the lord *William* the Third, on which day the judgment aforesaid was given, or ever after, was or were seized, upon a reasonable price and extent, to hold to them the goods and chattels aforesaid as their own proper goods and chattels, and also to hold the one half of the lands and tenements aforesaid to them and their assigns, according to the form of the statute aforesaid, until they shall have thereout fully levied the debt and damages aforesaid; and how you shall have executed this our writ send to us at *Westminster* on day next after under your seal and the seal of those by whose oath you shall make that extent and appraisement, together with this writ: Witness *J. Holt*, knt. at *Westminster* 23d day of *October* in the third year of our reign.

Elegit in debt
for an administrator
de bonis
non on a judgment
recovered
by the intestate.

ANNE, &c. To the sheriff of *York*, greeting: whereas *W. H.* the younger in the court of the lord and lady *William* and *Mary*, late king and queen of *England*, &c. before the late king and queen themselves at *Westminster*, by bill, without the writ of the said late king and queen, and by the judgment of the same court, had recovered against *Barnabas T.* esq; otherwise called, &c. 200 *l.* debt, and also 8 *l.* for his damages which he had sustained as well by reason of the detention of that debt,

as for his costs and charges by him about his suit in that behalf expended, whereof the said *Barnabas* is convicted, as it appears to us on record: and afterwards the said *William H.* at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape* died of the debt and damages aforesaid, or any part thereof, unsatisfied; after whose death, to wit, on the 20th day of *December* in the year of the Lord 1694, at *London* aforesaid in the parish and ward aforesaid, administration of all and singular the goods and chattels, rights and credits, which belonged to the said *William* at the time of his death, with the will of the said *William* annexed, was committed to one *Thomas B.* by *George H.* professor of divinity, dean of the cathedral and metropolitan church of *Christ Canterbury*, and the chapter of the same church, to whom all and all manner of jurisdiction spiritual and ecclesiastical which belonged to the archbishop of *Canterbury*, the see being full, the same see then being vacant, is notoriously known to belong; which said *Thomas B.* afterwards, at *London* aforesaid in the parish and ward aforesaid, by due process of law levied of the goods and chattels of the said *Barnabas* 46 l. 18 s. part of the debt and damages aforesaid, and afterwards there died, not paid or satisfied the residue of the debt and damages aforesaid; after whose death administration of all and singular the goods and chattels, rights and credits, which belonged to the said *William* at the time of his death unadministred by the said *T. B.* with the will of the said *W. H.* annexed, was granted to one *Anne B.* widow, by *Thomas* by divine providence archbishop of *Canterbury*, primate and metropolitan of all *England*, at *London* aforesaid in the parish and ward aforesaid, and the said residue of the debt and damages aforesaid to the same *A.* is yet unpaid, whereof the same *B.* is convicted, as it appears to us on record; and whereof in our same court before us at *Westminster* it is considered, that the said *A.* may have her execution against the said *Barnabas* for the residue of the debt and damages aforesaid by the default of him the said *Barnabas*, &c. And afterwards the said *Anne* came into our court before us at *Westminster*, and chose to be deliver'd to her all the goods and chattels of the said *Barnabas*, saving only his oxen and beasts of his plough, and also the one half of all the lands and tenements of the said *Barnabas* in your bailiwick, to hold to her the goods and chattels aforesaid as her proper goods and chattels, and also to hold the one half aforesaid to her and her assigns as her freehold, according to the statute thereof lately made and provided, until she shall have thereout fully levied 161 l. 2 s. the residue of the debt and damages aforesaid: therefore we command you that you, without delay, cause to be delivered to the said *Anne* all the goods and chattels of the said *Barnabas* in your bailiwick, saving only his oxen and beasts of his plough, and also the one half of all the lands and tenements of the said *Barnabas* in your bailiwick, whereof the said *Barnabas*, and any person and persons in trust for him the said *Barnabas*, on day next after in the

Administration with the will annexed granted to *T. B.* by the dean, &c. Side vacante.

Who levied part and died.

Administration de bonis non granted to *A. B.* who received the judgment by seire facias.

[573]

13 E. 1. c. 13.

the 6th year of the reign of the lord and lady *William and Mary*, late king and queen of *England*, on which day the judgment aforesaid was given or ever after was or were seised upon a reasonable price and extent, to hold to her the goods and chattels aforesaid as her proper goods and chattels, and also to hold the one half of the lands and tenements aforesaid as her freehold to her and her assigns, according to the form of the statute aforesaid until she shall have thereout fully levied the said 161 l. 2 s. the residue of the debt and damages aforesaid; and how you shall have executed this our writ to us at *Westminster*, on _____ day next after _____ certify under your seal and the seals of those by whose oath you shall make that extent and appraisement, together with this writ. Witness *J. Holt*, knt. at *Westminster*, &c.

Elegit in debt after judgment in a testatum scire facias against the tertenant.

Death of the defendant.

Scire facias.

The return.

WILLIAM the Third, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. To the sheriff of *Stafford*, greeting: whereas *George B.* lately in the court of the lord *Charles* the Second, late king of *England*, before the late king himself at *Westminster*, by bill, without the writ of the same late king, and by the judgment of the same court, recovered against *W. H.* gent. otherwise called *William H.* of *Wednesbury* in the county of *Stafford*, gent. 160 l. debt, and also 50 s. for his damages which he sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *William* is convicted, as it appears to us on record, and the said *William H.* after the judgment aforesaid, in form aforesaid recovered, died; and execution of the judgment aforesaid yet remains to be made, as we have by the suggestion of the said *George* in our court before us understood: whereupon the same *George* hath besought us to grant him his proper remedy in this behalf; and because we are willing that those things which are lawfully transacted in our said court should be carried into due execution, we lately commanded our sheriffs of the city of *Coventry* that they should, by good and lawful men of their bailiwick, give notice to the tenants of all the lands and tenements in their bailiwick whereof the said *William*, on _____ day next after _____ in *Michaelmas* term in the 21st year of the reign of the said late lord king *Charles* the Second, on which day the judgment aforesaid was given or ever after was seised, that they should be before us at *Westminster*, on _____ day next after _____ last past, to shew if they had or could say any thing why the debt and damages aforesaid ought not to be levied on those lands and tenements and paid to the said *George B.* according to the force, form and effect of the recovery aforesaid, if they should think fit, and farther to do and receive what our same court before us should then and there consider concerning them in this behalf; and our said sheriffs of our city of *Coventry* on that day returned to us that there are not nor is any tenants or tenant of any lands

or tenements in their bailiwick whereof the said *William* was seised on day next after in *Michaelmas* term in the 21st year of the reign of the lord *Charles* the Second late king of *England*, &c. or ever after, to whom they could give notice; whereupon, on the behalf of the said *George B.* in our court before us it was sufficiently testified, that there are several tenants of sundry lands and tenements which were the lands and tenements of the said *W. H.* deceased, at the time of the rendition of the judgment aforesaid, and after, in your county to whom you may give notice; whereupon we commanded you, that by good and lawful men of your bailiwick you should give notice to the tenants of all the lands and tenements which were the lands and tenements of the said *W. H.* deceased, at the said time of the rendition of the judgment aforesaid, or ever after, that they should be before us at *Westminster*, on *Monday* next after the octave of *St. Hilary* last past, to shew if they had or could say any thing why the debt and damages aforesaid ought not to be levied on those lands and tenements, and paid to the said *George* according to the force, form and effect of the recovery aforesaid if they thought fit, and farther to do and receive what our same court before us should then and consider concerning them in this behalf, and that you should have then there the names of those by whom you should give them notice, and that writ: and you our sheriff of *Stafford* on that day returned to us, that by virtue of the writ aforesaid to you directed, you had by *R. L.* and *J. T.* good and lawful men of your bailiwick, given notice to *Mary H.* widow, tenant of one messuage, two barns, &c. with the appurtenances in the parish of *Wednesbury* in your bailiwick, which were the messuages, lands and tenements of the said *William H.* in his life-time at the time of the rendition of the judgment aforesaid, to wit, on day next after in *Michaelmas* term in the 21st year of the reign of the said late lord king *Charles* the Second, whereof the said *William* then and afterwards was seised in his demesne as of fee, to be before us at the day and place aforesaid, to shew if she had or could say any thing, why the said *George* ought not to have his execution against her for the debt and damages aforesaid, to be levied on those lands and tenements, according to the force, form and effect of the recovery aforesaid, and farther to do and receive as the writ aforesaid commanded and required; and you farther certified, that there were not nor was any other tenants or tenant of any other lands or tenements in your county which were the lands and tenements of the said *W. H.* at the said time of the rendition of the judgment aforesaid, or ever after in your bailiwick, to whom you could give notice, as by that writ you was commanded; and the said *Mary H.* altho' solemnly called did not come, but made default; wherefore in our court before us it is considered, that the said *George B.* may have his execution against the said *Mary* for the debt and damages aforesaid, to be levied on the lands and tenements aforesaid, according to the force, form and effect of the

Testatum to the sheriff of *Stafford*.

[574]

The sheriff returns a *seire feci* to *M. H.* tenant of several lands.

Judgment by default.

An *elegit* prayed. the recovery aforesaid : and because the said *George*, according to the form of the statute in such case made and provided, hath come into our court before us at *Westminster*, and chose to be delivered to him one half of all the lands and tenements aforesaid, to hold to him and his assigns as his freehold, according to the form of the statute aforesaid, until he shall have thereout fully levied the debt and damages aforesaid : therefore we command you, that you cause to be delivered one half of all the lands and tenements aforesaid with the appurtenances to the same *George*, upon a reasonable price and extent, to hold to him and his assigns as his freehold, according to the form of the statute aforesaid, until he shall have thereout fully levied the debt and damages aforesaid : and how you shall have executed this our precept return to us at *Westminster* on day next after under your seal and the seal of those by whose oath you shall make that extent and appraisement, together with this writ. Witness *J. Holt*, *knt.* at *Westminster* 12th day of *February* in the 11th year of our reign.

13 E. 1. c. 18.

The execution of this writ appears in a certain schedule to this writ annexed.

The answer of *Walter Landor*, *esq;* sheriff.

The inquisition thereon returned.

Stafford, A N inquisition indented taken at *Wolverhampton* in to wit. the county aforesaid on the 13th day of *May* in the 11th year of the reign of the lord *William* the Third, now king of *England*, &c. before me *W. L.* *esq;* sheriff of the county of *Stafford* aforesaid, by virtue of the writ of the lord the king to me directed, and to this inquisition annexed, by the oath of *G. U. M. B. W. N.* &c. good and lawful men of my bailiwick, who being charged and sworn on their oath aforesaid say, that *W. H.* gent. in the said writ annexed named, on the day of the rendition of the judgment in the said writ mentioned, to wit, on *Saturday* next after three weeks of *St. Michael* in *Michaelmas* term in the 21st year of the reign of the lord *Charles* the Second, late king of *England*, &c. being the day of the rendition of the judgment in the said writ annexed mentioned, was seised in his demesne as of fee of and in one messuage with the appurtenances, situate, lying and being in *Wednesbury* in the county of *Stafford* aforesaid, of the clear yearly value in all issues, besides reprises, of 60 *s.* now or late in the tenure or occupation of *Thomas T.* *esq;* or his assigns, and also of and in one close of pasture called *Jenning's Close*, containing by estimation two acres with the appurtenances, situate, lying and being in *Wednesbury* in the county aforesaid, of the clear yearly value in all issues, besides reprises, of 30 *s.* now or late in the tenure or occupation of the said *Thomas T.* or his assigns, and also of and in, &c. (so all the particulars to) And the jurors aforesaid on their oath aforesaid farther say, that the said messuage with the appurtenances in
Wednesbury

Wednesbury aforesaid, the said close called *Jenning's Close*, containing by estimation two acres of pasture, and the said two closes, &c. are a true and equal half of all and singular the lands, tenements and hereditaments whatsoever in the county of *Stafford* aforesaid, of the said *William H.* gent. in the said writ named; which said half I the said sheriff on the day of the caption of this inquisition caused to be delivered to the said *George B.* in the said writ named, at the reasonable price and extent aforesaid, to hold to him and his assigns as his freehold, according to the form of the statute thereof lately made and provided, until he shall have thereout fully levied the debt and damages aforesaid in the said writ specified, as the writ aforesaid commands and requires: and the jurors aforesaid on their oath aforesaid farther say, that the said *William H.* gent. in the writ aforesaid named at the time of the rendition of the judgment aforesaid in the said writ specified, or ever after, had no other or more lands or tenements in the county aforesaid. In witness whereof as well I the said sheriff as the jurors aforesaid have to this inquisition severally set our seals the day, year and place aforesaid.

Walter Landor, esq; sheriff.

[575]

ANNE, &c. To the sheriff of *Kent*, greeting: whereas *Charles P.* gent. lately in the court of the lord *William* the Third, late king of *England*, before the late king himself at *Westminster*, by bill, without the writ of the same late king, and by the judgment of the same court recovered against *Jeffery B.* of *Gray's-Inn* in the county of *Middlesex*, otherwise called *Jeffery B.* of *Gray's-Inn* in the county aforesaid, esq; 4000 l. and also 4 l. for his damages which he had sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Jeffery B.* is convicted, as it appears to us on record; and whereof in our court before us at *Westminster* it is considered, that the said *Charles* may have his execution against the said *Jeffery* for the debt and damages aforesaid, by the default of him the said *Jeffery*, &c. And because the said *Charles* hath come into our said court, and chose to be delivered to him all the goods and chattels of the said *Jeffery*, saving only his oxen and beasts of his plough, and likewise the one half of all the lands and tenements of the said *Jeffery* in your bailiwick, to hold to him the goods and chattels aforesaid as his own goods and chattels, and also to hold the one half aforesaid to him and his assigns as his freehold, according to the form of the statute thereof lately made and provided, until he shall have thereout fully levied the debt and damages aforesaid; therefore we command you, that you without delay cause to be delivered to the said *Charles* all the goods and chattels of the said *Jeffery* in your bailiwick, saving only his oxen and beasts of his plough, and also the one half of all the lands and tenements of the said *Jeffery* in your bailiwick, whereof the said *Jeffery*, and any person and persons in trust for him the said *Jeffery*,

Elegit in debt after a scire facias.

13 E. 1. c. 18.

fery, on *Thursday* next after the octave of *St. Hilary* in *Hilary* term in the 10th year of the reign of the said lord *William* the Third, late king of *England*, &c. on which day the judgment aforesaid was given, or ever after, was or were seised, upon a reasonable price and extent, to hold to him the goods and chattels aforesaid as his own goods and chattels, and also to hold the one half of the lands and tenements aforesaid to him and his assigns as his freehold, according to the form of the statute aforesaid, until he shall have thereout fully levied the debt and damages aforesaid; and how you shall have executed this our writ send to us at *Westminster* on day next after under your seal and the seals of those by whose oath you shall make that extent and appraisement, together with this writ. Witness *J. Holt*, knt. &c.

Elegit on a judgment on a recognisance on a writ of error in the exchequer chamber.

13 E. 1. c. 18.

[576]

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: whereas lately in our court before us at *Westminster* it was considered, that *Samuel H.* should have his execution against *Nathaniel F.* of, &c. and *Daniel N.* of, &c. the bail of *John G.* for 269 *l.* 2 *s.* which to the same *Samuel* lately in our said court before us at *Westminster* were adjudged, according to the form and effect of a certain recognisance by them the said *Nathaniel* and *Daniel* for the said *John G.* acknowledged in our court before *J. H.* knt. our chief justice assigned to hold pleas in our court before us at his chambers situate in *Serjeant's-Inn* in *Chancery-lane*, *London*, upon our certain writ of error, returnable in our court before our justices of the common bench and the barons of our exchequer of the degree of the coif into the chamber of our exchequer, as by the record thereof in our said court before us at *Westminster* remaining manifestly appears: and because the said *Samuel* hath come into our court before us at *Westminster*, and chose to be delivered to him all the goods and chattels of the said *Nathaniel* and *Daniel*, saving only their oxen and beasts of their plough, and also the one half of all the lands and tenements of the said *Nathaniel* and *Daniel* in your bailiwick, to hold to him the goods and chattels aforesaid as his proper goods and chattels, and also to hold the one half aforesaid as his freehold to him and his assigns, according to the form of the statute thereof lately made and provided, until he shall have thereout fully levied the said 269 *l.* 2 *s.* Therefore we command you, that without delay you cause to be delivered to the said *Samuel* all the goods and chattels of the said *N.* and *D.* in your bailiwick, saving only their oxen and beasts of their plough, and also the one half of all the lands and tenements of the said *N.* and *D.* in your bailiwick, whereof the said *N.* and *D.* on day next after last past, on which day the judgment aforesaid was given, or ever after, were seised, upon a reasonable price and extent, to hold to him the goods and chattels aforesaid as his goods and chattels, and also to hold the one half of the lands and tenements aforesaid as his freehold to him and his assigns, according to the form of

of the statute aforesaid, until he shall have thereout fully levied the debt and damages aforesaid; and how you shall have executed this our writ certify to us at *Westminster* on _____ day next after _____ under your seal and the seals of those by whose oath you shall make that extent and appraisement, and this writ. Witness, &c.

WILLIAM, &c. To the sheriff of *Northampton*, greeting: whereas lately in our court before our justices at *Westminster* it was considered that *S. M.* should have execution against *Edward* lord *G.* as well for a certain debt of 5000 *l.* which the same *Samuel* in the court of the lord *James* the Second, late king of *England*, &c. before the justices of the said late king at *Westminster* had recovered against him, as for 40 *s.* which to the same *Samuel* in the same court of the said late king were adjudged for his damages which he had as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, by the default of him the said *Edward* lord *G.* And the same *Samuel* afterwards came into our court before our justices at *Westminster*, and by the statute thereof made and provided, chose to be delivered to him all the goods and chattels of the said lord *G.* saving only his oxen and beasts of his plough, and also the one half of all his lands and tenements in your bailiwick, to hold to him the goods and chattels aforesaid as his own proper goods and chattels, and also to hold the one half aforesaid as his freehold to him and his assigns, according to the form of the statute aforesaid, until he shall have thereout fully levied the debt and damages aforesaid: and therefore we command you, that you without delay cause to be delivered to the said *Samuel*, upon a reasonable price and extent, all the goods and chattels of the said lord *G.* saving only his oxen and beasts of his plough, and also the one half of all his lands and tenements in your bailiwick, whereof the said lord *G.* from the day of *Easter* in 15 days in the first year of the reign of the said late king, on which day the judgment aforesaid was first given against him, or ever after, was seised, to hold to him the goods and chattels aforesaid as his own proper goods and chattels, and also to hold the one half aforesaid as his freehold to him and his assigns, according to the form of the statute aforesaid, until he shall have thereout levied the debt and damages aforesaid; and how you shall have executed this our writ certify to our justices at *Westminster* from the day of *St. Martin* in 15 days; and have there this writ. Witness *G. Treby*, knt. at *Westminster* 23d day of *October* in the 7th year of our reign.

Elegit on a judgment in debt in C. B.

13 E. 1. c. 18.

Northampton, **A**N inquisition indented taken at the town of _____ to wit. _____ *Northampton* in the county aforesaid on the 11th day of *November* in the 7th year of the reign of the lord *William* the Third, by the grace of God, of *England*, *Scotland*,

The inquisition thereon.

France and Ireland king, defender of the faith, &c. before me *H. F.* esq; sheriff of the county aforesaid, by virtue of the writ of the said lord the king to me directed, and to this inquisition annexed, by the oath of *W. H.* gent. *H. O. W. P. J. S. E. C. N. R. J. B. F. G. A. M. T. Y. J. P.* and *V. R.* good and lawful men of the county aforesaid, who being sworn and charged on their oath say, that *Edward* lord *Griffin* in the writ aforesaid named at the time of the rendition of the judgment in the same writ specified, to wit, from the day of *Easter* in 15 days in the first year of the reign of the lord *James* the Second, late king of *England*, &c. was seised in his demesne as of fee of and in one messuage, and of and in one close of pasture with the appurtenances, called *The Park*, to the said messuage adjoining, containing by estimation 25 acres, situate, lying and being in *Dingley* in the county aforesaid, and now or late in the tenure or occupation of *James G.* esq; or his assigns, of the clear yearly value in all issues, besides reprises, of 10 *l.* and of and in one other close of pasture with the appurtenances, called the *Neither Grounds*, containing by estimation 250 acres, situate, lying and being in *D.* aforesaid in the county aforesaid, now or late in the tenure or occupation of *T. D.* or his assigns, of the clear yearly value in all issues, besides reprises, of 100 *l.* and of and in one meadow with the appurtenances, called *Bowden Meadow*, containing by estimation 20 acres, lying and being in *D.* aforesaid in the county aforesaid, now or late in the tenure or occupation of *R. B.* or his assigns, of the clear yearly value in all issues, besides reprises, of 8 *l.* and of and in one other close of pasture with the appurtenances, called the *Upper Great-ground*, containing by estimation 120 acres, lying and being in *Dingley* aforesaid in the county aforesaid, now or late in the tenure or occupation of the said *R. B.* or his assigns, of the clear yearly value in all issues, besides reprises, of 50 *l.* &c. And the jurors aforesaid on their oath aforesaid farther say, that the messuage, called the *Castle* in *Bradbrooke* aforesaid, and the said five several closes, called the *Park*, the *Grange*, the *New Close*, the *But Close*, and the *Bush Close* with the appurtenances in the tenure or occupation of the said *John S.* or his assigns, the said closes, called the *Cotter's Close* and *Armitage Close* with the appurtenances in the tenure or occupation of the said *J. S.* or his assigns, the said close, called the *Farthest Ecclands* with the appurtenances in the tenure or occupation of the said *Richard M.* or his assigns; which said several messuage, closes, lands and tenements aforesaid last mentioned, situate, lying and being in *B.* aforesaid in the county aforesaid, are an equal, full and just half of the premises aforesaid, by the jurors aforesaid in form aforesaid found; which said half last mentioned, I the said sheriff on the day of the caption of this inquisition caused to be delivered to *Samuel M.* in the writ aforesaid named, to hold to him and his assigns as his freehold, until he shall have thereout fully levied the debt and damages aforesaid in the writ aforesaid mentioned, according to the form

[577]

The moiety
set over.

of the statute in such case lately made and provided, according to the command of the writ aforesaid: and lastly, the jurors aforesaid on their oath aforesaid say, that the said *Edward* lord *Griffin* hath no goods or chattels, nor at the time of the rendition of the judgment aforesaid in the writ aforesaid specified, or ever after hitherto, had any other or more lands or tenements in the county aforesaid to the knowledge of the jurors aforesaid. In witness whereof as well I the said sheriff as the jurors aforesaid to this inquisition have severally put our seals the day, year and place above said.

Afterwards, to wit, on *Wednesday* next after three weeks of the holy *Trinity* comes the said plaintiff in his proper person, and by the form of the statute in such case made and provided, chooses to be delivered to him all the goods and chattels of the said *Ambrose M.* and *Henry M.* saving only their oxen and beasts of their plough, and also the one half of all the lands and tenements of the said *Ambrose M.* and *Henry M.* in the county of *Surry*, of which the same *Ambrose M.* and *Henry M.* on *Wednesday* next after 15 days of *Easter* in the 29th year of the reign of the lord *Charles* the Second, late king of *England*, &c. on which day the judgment aforesaid in the writ of *scire facias* aforesaid mentioned was given, or ever after were, or either of them, was seised, upon a reasonable price and extent, to hold to him the goods and chattels aforesaid as his own proper goods and chattels, and to hold the one half aforesaid to him and his assigns as his freehold, according to the form of the statute aforesaid, until he shall have thereout fully levied the debt and damages aforesaid; and the same *Ralph* prays the writ of the lord the now king to be therefore directed to the sheriff of the county of *Surry*; and to him it is granted returnable before the lord the king at *Westminster* on day next after the same day is given to the said *Ralph* there, &c. On which day before the lord the king at *Westminster* comes the said *Ralph* in his proper person; and the said sheriff of the county of *Surry* hath not returned the writ aforesaid, nor done any thing therein; and upon this the said *Ralph* prays another writ of the said lord the king to the same sheriff of the county of *Surry* in form aforesaid to be directed; and to him it is granted, &c. returnable before the said lord the king at *Westminster* on day next after The same day is given to the said *Ralph* there, &c. On which day before

The entry of an *elegit* against two defendants after judgment on a *scire facias*. H. 8 W. 3. Roll 79.

13 E. 1. c. 18.

An *alias* awarded.

Another awarded.

The return, as
to one defen-
dant, no goods.

As to the other,
no lands.

Inquisition.

fore the said lord the king at *Westminster* comes the said *Ralph* in his proper person; and the said sheriff of the county of *Surry*, to wit, *W. M.* esq; by virtue of the said last writ to him directed returns, that the said *Ambrose M.* had no goods or chattels in his bailiwick whereof he could cause to be levied the debt and damages aforesaid, or any penny thereof; and that the said *Henry M.* on day next after in the 20th year of the reign of the lord *Charles* the Second, late king of *England*, &c. being the day of the rendition of the judgment aforesaid, or ever after, had no lands or tenements in his bailiwick whereof he could cause to be levied the debt and damages aforesaid, or any parcel thereof; and the same sheriff farther returns a certain inquisition taken before him at *Southwark* in the county of *Surry* on the 26th day of *November* in the ninth year of the reign of the lord *William* the Third, now king of *England*, &c. which said inquisition follows in these words, to wit, An inquisition indented taken, &c.

[578]

The return of
an *elegit* where
a lease is found
and land also.
4 Co. 74.
Cr. El. 584.

AN inquisition indented taken at *S.* in the county aforesaid on the 10th day of *N.* in the year, &c. before me *A. P.* sheriff of the county aforesaid, by virtue of the writ of the said lord the king to me directed, and to this inquisition annexed, by the oath of *A. B.* &c. good and lawful men of the county aforesaid; who being sworn and charged say on their oath, that *S.* in the writ to this inquisition annexed named, on the day of the caption of this inquisition was possessed of the residue of a term of 99 years then to come, if *W. S.* and the said *S. S.* and *B.* his wife, or any of them should so long live; which said term was granted by one *A. B.* to him the said *S.* his executors, administrators and assigns, for the term aforesaid, by indenture bearing date 10th day of *December* in the first year of the reign of the lord the now king and of the lady *Mary* the late queen of *England*, &c. to hold from the feast of *St. Michael* the archangel then last past for the term aforesaid (they the said *W. S.* *S. S.* and *B.* at the said time of the caption of this inquisition being in full life) and of and in one messuage with the appurtenances, one close called *B.* one other close called *C.* (and so on) in *Cold Norton* in my county, now or late in the tenure or possession of the said *S. S.* or his tenants, the estate, interest and term of which said *S. S.* in the tenements aforesaid, the jurors aforesaid have on their oath aforesaid appraised to 100 *l.* which said term I the said sheriff have caused to be delivered to the said plaintiff, to hold to him as his own proper goods and chattels, in part of satisfaction of his debt, in the writ aforesaid mentioned: and the jurors aforesaid on their oath aforesaid likewise say, that the said *S. S.* at the time of the rendition of the judgment in the same writ mentioned, to wit, from the day of *St. Michael* in three weeks in the fifth year of the reign of the lord the now king and of the said lady *Mary* late queen of *England*, in the writ aforesaid mentioned, was seised in his demesne

as of fee of and in one messuage and one close of pasture thereto adjoining with the appurtenances, containing by estimation 20 acres, situate, lying and being in *A.* aforesaid in the county aforesaid, now or late in the tenure or possession of *A. B.* or his assigns, of the clear yearly value in all issues, besides reprises, 10*l.* and of and in one other close of pasture with the appurtenances, called *C. B.* containing by estimation 20 acres, situate, lying and being in *A.* aforesaid in the county aforesaid, and now or late in the tenure or (*and so on as before*) and the jurors aforesaid on their oath aforesaid farther say, that the said messuage and the said close of pasture thereto adjoining, containing by estimation 20 acres, and the said other close called, &c. are a true and equal half of all and singular the lands, tenements and hereditaments whatsoever of the said defendant in the writ aforesaid named in my county; which said half I the said sheriff on the day of the caption of this inquisition, upon the reasonable price and extent aforesaid, have caused to be delivered to the said plaintiff in the writ aforesaid named, to hold to him and his assigns as his freehold, according to the form of the statute thereof lately made and provided, until he shall have thereout fully levied the residue of the debt and damages aforesaid in the writ aforesaid specified, as the said writ commands and requires: and the jurors aforesaid on their oath aforesaid farther say, that the said *S. S.* in the writ aforesaid named had not on the day of the caption of this inquisition any other or more goods or chattels in my bailiwick, nor at the time of the rendition of the judgment aforesaid in the writ aforesaid mentioned, nor at any time after hitherto, had any other or more lands or tenements in my county. In witness whereof, &c.

13 E. 1. c. 18.

Excommunicato capiendo.

[579]

ANNE, &c. To the sheriff of *Cambridge*, greeting: *John B.* doctor of laws, of the court of *Canterbury* of the arches, *London*, official principal lawfully constituted, hath signified to us, that he hath rightfully and lawfully proceeded, and hath read, given and pronounced a certain definitive sentence against one *Samuel W.* of the parish of *St. Buttolph* within the town of *Cambridge*, in a certain cause of appeal in the court of *Canterbury* of the arches aforesaid, which before him in judgment, between the said *Samuel W.* and *John G.* and *William L.* the parties pretended, appellate and querelate, was on each side lately litigated and depended in judgment, for his manifest contumacy in not paying, or causing to be paid, really and with effect to the same *John G.* and *William L.* or their proctor, according to the tenor of the said sentence, and the monition on him

A writ of *excom- cap'* after sentence in the spiritual court.

him judicially made, the sum of 15*l.* of lawful money of *Great Britain*, for the expences of the suit in the cause aforesaid, within a time long since elapsed, according to the monition preceding before on him judicially made, and his subsequent contumacy hath pronounced contumacious, and for the punishment of such his contumacy hath decreed to be excommunicated, and by the ordinary authority of him the said official he is excommunicated, nor will by ecclesiastical censure be brought to justice: and because the holy church ought not to be without the true royal power in their complaints, we command you, that you take the said *Samuel* by his body, according to the custom of *England*, until he shall satisfy the holy church as well for the contempt as for the injury by him done to her; and how you shall have executed this our writ certify to us from the day of *St. Michael* in three weeks, wheresoever we shall then be in *England*, that we may farther cause to be done in the premises as of right and according to the form of the statute in such case provided shall be to be done, and this by no means omit; and have there this writ. Witness ourself at *Westminster* 7th day of *June* in the 13th year of our reign.

Swift.

[580]

Extent.

An extent on
a *capias* *fi* laicus.

JAMES, &c. To the sheriff of *Monmouth*, greeting: whereas we lately commanded you, that you should take the body of *Richard B.* late of the town of *Monmouth* in your county, gent. if he was lay, and cause him safely to be kept in our prison until he had fully satisfied *John O.* vintner, executor of the last will and testament of *Ralph O.* late of the city of *Bristol*, vintner, deceased, 500*l.* which the same *Richard* on the 24th day of *June* in the 25th year of the reign of the lord *Charles* the Second, late king of *England*, of blessed memory, before *C. G.* esq; then mayor of the city of *Bristol*, keeper of the greater piece of the seal appointed for the sealing of statutes of merchants within the said city, and *R. A.* esq; then the clerk appointed to take recognisances of the debts of merchants within the same city, keeper of the lesser piece of the same seal, acknowledged that he owed to the said *Ralph*, and which he ought to have paid on the feast of *All Saints* then next ensuing, and had not yet paid them either to the said *Ralph* in his lifetime, or to the said *John* the executor after the death of the said *Ralph*, &c. and how you should execute that writ you should certify to us on the octave of the purification of the blessed *Mary*, wheresoever, &c. And you on that day returned to us, that the said *Richard* is lay, and is not found in your bailiwick;

liwick; and therefore we command you, that you cause to be delivered to the said *John O.* by a reasonable price and extent, all the goods and chattels of the said *Richard B.* and all the lands and tenements which were the said *Richard B.*'s in your bailiwick, on the day of the recognisance of the debt aforesaid, or ever after, to whose hands soever they are come, unless they be descended to some heir (being under age) by hereditary descent, to hold the goods and chattels aforesaid as his own proper goods and chattels, and the lands and tenements aforesaid as his freehold, to him and his assigns, according to the form of the statute thereof provided, until he shall have thereout levied the debt aforesaid, together with his necessary and reasonable damages and costs, as in labours, suits, delays and expences: take nevertheless the body of the said *Richard B.* if he shall be found in your bailiwick, and him safely keep in our prison until he shall fully satisfy the said *John O.* the debt aforesaid in form aforesaid; and how you shall execute this our command certify to us from the day of *Easter* in one month, wheresoever, &c. And have there this writ. Witness *Robert W.* knt. at *Westminster* 13th day of *February* in the 4th year of our reign.

13 E. 1. c. 11.

Fieri Facias.

[581]

ANNE, &c. To the sheriff of *Surry*, greeting: whereas we commanded our sheriffs of *London*, that of the goods and chattels of *John C.* clerk, otherwise called *John C.* of *Croydon* in the county of *Surry*, clerk, in their bailiwick, they should cause to be made 100*l.* debt, which *Josias P.* lately in our court before us at *Westminster* recovered against him, and also 36*s.* which to the same *Josias* lately in the same court before us at *Westminster* aforesaid were adjudged for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *John* is convicted, as it appears to us on record; and whereon in our same court before us at *Westminster* aforesaid it is considered, that the said *Josias* may have his execution against the said *John* for the debt and damages aforesaid, and also 10*l.* which to the same *Josias* in our same court before us, according to the form of the statute in such case thereof lately made and provided, were adjudged for his costs and charges which he the same *Josias* sustained by reason of the delay of the execution of the judgment aforesaid, whereof the same *John* is likewise convicted, as it also appears to us on record; and that they should have that money before us at *Westminster* on *Wednesday* next after 15 days of *Easter*, to be paid to the said *Josias P.* for the debt, damages, costs and charges

A testatum fieri facias in debt after a fairs facias.

Scire facias.

Testatum.

charges aforesaid; and our said sheriffs of *London* on that day returned to us, that the said *John C.* hath no goods or chattels in their bailiwick whereof they could cause to be made the debt, damages, costs and charges aforesaid, or any part thereof; whereupon on the behalf of the said *Josias* in our court before us it is sufficiently testified, that the said *John C.* hath sufficient goods and chattels in your bailiwick whereof you may cause to be made the debt, damages, costs and charges aforesaid: therefore we command you, that of the goods and chattels of the said *John C.* in your bailiwick you cause to be made the said 100*l.* debt, and the said 36*s.* for the damages aforesaid, as also the said 10*l.* for the costs and charges aforesaid; and have that money before us at *Westminster* on *Saturday* next after three weeks of *Easter*, to be paid to the said *Josias* for the debt, damages, costs and charges aforesaid; and have, &c.

Return, that the defendant is a clerk beneficed.

By virtue of this writ to me directed, I certify to the most serene lady the queen, that the within named *John C.* is a clerk beneficed in my bailiwick, to wit, vicar of the vicarage of *Croydon* in my county, which said vicarage of *Croydon* is a peculiar, and exempt from the jurisdiction of the lord archbishop of *Canterbury*; and that the said *John* hath not any lay fee in my bailiwick whereof I can cause to be made the debt and damages, costs and charges aforesaid, or any part thereof.

[582]
Fieri facias on a judgment on a recognisance of bail in C. B. after an affirmation thereof in K. B.

GEORGE, &c. To the sheriff of *Middlesex*, greeting: we command you, that of the lands and chattels of *William T.* of the parish of *St. Margaret Westminster* in your county, gent. being in your bailiwick, you cause to be made 100*l.* and of the lands and chattels of *John B.* of *Grange Court, Lincoln's-Inn Fields* in your county, gent. in your bailiwick, you cause to be made 100*l.* to be paid to *John F.* according to the form and effect of the adjudication of execution on a certain recognisance by them the said *William T.* and *John B.* to the said *John F.* in our court before *Peter K.* knt. and his companions, our justices of the bench at *Westminster* acknowledged, as by the record and proceedings of the adjudication of execution thereon, which into our court before us at *Westminster* we lately for certain causes of error in the same to be corrected caused to be brought, appears to us on record, and which in our same court before us, being in all things affirmed, now remaining appears likewise to us on record, and also 12*l.* which to the same *John F.* in our same court, according to the form of the statute in such case made and provided, were adjudged for his costs and charges which he had sustained by reason of the delay of execution of the judgment aforesaid, on pretence of the prosecution of our said writ of error by the said *William T.* and *John B.* of and upon the premises aforesaid prosecuted, whereof the said *William T.* and *John B.* are convicted, as it likewise appears to us on record; and have that money before us from the

3 H. 7. c. 10.

the day of wherefoever we shall then be in *England*, to be paid to the said *John F.* for his debt, damages, costs and charges afore said ; and have there this writ. Witness, &c.

G E O R G E, &c. To the sheriffs of *London*, greeting : *Testatum fieri facias against the bail on a judgment by default on a scire facias in K. B.*
 whereas we lately commanded our sheriff of *Middlesex*, that of the goods and chattels of *William H.* of the *Poultry Counter*, serjeant at mace, and *Nathaniel H.* of the same place, yeoman, the manucaptors of *William P.* in his bailiwick, he should cause to be made 24*l.* which *John L.* esq; lately in our court before us at *Westminster* recovered against the said *William P.* for his damages which he sustained as well by reason of the non-performance of a certain promise and assumption to the same *John L.* by the said *William P.* lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the same *William P.* is convicted, as it appears to us on record ; and whereof in our same court before us at *Westminster* it is considered, that the said *John L.* may have his execution against the said *William H.* and *Nathaniel H.* for the damages, costs and charges afore said, according to the force, form and effect of a certain recognisance by them the said *William H.* and *Nathaniel H.* in our said court before us at *Westminster* for the said *William P.* at the suit of the said *John L.* in the suit afore said acknowledged, by the default of them the said *William H.* and *Nathaniel H.* as appears likewise to us on record ; and should have that money before us at *Westminster* on day next after to be paid to the said *John L.* for his damages, costs and charges afore said : and our said sheriff of *Middlesex* on that day returned to us, that the said *W. H.* and *N. H.* have not, nor hath either of them, any goods or chattels in his bailiwick whereof he can cause to be made the damages afore said, or any parcel thereof ; whereupon on the behalf of the said *John L.* in our court before us it is sufficiently testified, that the said *William H.* and *Nathaniel H.* have, and each of them hath, sufficient goods and chattels in your bailiwick to satisfy the same *John L.* the damages afore said : therefore we command you, that of the goods and chattels of the said *William H.* and *Nathaniel H.* in your bailiwick, you cause to be made the said 24*l.* and that you have that money before us at *Westminster* on day next after to be paid to the said *John L.* for the damages afore said ; and have there then this writ. Witness *J. Pratt*, knt. at *Westminster* 17th day of *June* in the fourth year of our reign.

G E O R G E, &c. To the sheriff of *Berks*, greeting : where- *Testatum nam mittas fieri facias on a judgment in C. B. affirmed in K. B.*
 as we lately commanded our sheriffs of *London*, that of the goods and chattels of *John R.* late of *Windsor* in your county, corn-chandler, in their bailiwick, they should cause to be made 15*ol.* 10*s.* which *E. F.* widow, lately in our court before *Peter K.* knt. and his companions, our justices of the bench at *Westminster*,

[583]

3 H. 7. c. 10.

ster, recovered against him for her damages which she sustained as well by reason of the non-performance of a certain promise and assumption to the same *Elizabeth* by the said *John* lately made, as for her costs and charges by her about her suit in that behalf expended, whereof the same *John* is convicted, as by the inspection of the record and proceedings thereof, which we into our court before us lately for certain causes of error caused to be brought, and which in our same court before us, being in all things affirmed, now remaining appears to us on record, as also 14 *l.* which to the same *Elizabeth* in our same court before us, according to the form of the statute in such case made and provided, were adjudged for her damages, costs and charges which she sustained by reason of the delay of execution of the judgment aforesaid; on pretence of the prosecution of our said writ of error whereof the same *John* is convicted, as it likewise appears to us on record; and that they should have that money before us on last past, wheresoever, &c. to be paid to the said *Elizabeth* for her damages, costs and charges aforesaid; and our said sheriffs of *London* on that day returned to us, that the within named *John R.* had no goods or chattels in their bailiwick whereof they could cause to be made the damages, costs and charges within written, or any parcel thereof; upon which on the behalf of the said *Elizabeth F.* in our court before us it is sufficiently testified, that the said *John R.* hath sufficient goods and chattels in your county whereof you may cause to be made the damages, costs and charges aforesaid: therefore we command you, that you do not omit on account of any liberty within your county, but that you enter into it, and of the goods and chattels of the said *John R.* in your bailiwick you cause to be made the said 164 *l.* 10s. for the damages, costs and charges aforesaid; and have that money before us at *Westminster* on day next after to be paid to the said *Elizabeth* for her damages, costs and charges aforesaid; and have there this writ. Witness *J. Pratt*, knt. at *Westminster* 15th day of *April* in the 5th year of our reign. *Ventris.*

A fieri facias
for costs on a
judgment in a
feigned issue di-
rected by the
court of K. B.

A N N E, by the grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. To the sheriff of *Surry*, greeting: we command you, that of the goods and chattels of *Samuel R.* in your bailiwick, you cause to be made 24 *l.* 6d. which *Richard S.* lately in our court before us at *Westminster* recovered against him for his damages which he sustained as well by reason of the non-performance of a certain promise and assumption to the same *Richard* by the said *Samuel R.* lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Samuel* is convicted, as it appears to us on record; and have that money before us at *Westminster* on day next after to be paid to the said *Richard* for his damages, costs and charges aforesaid; and have there then this writ. Witness *J. Holt*,

Holt, knt. at *Westminster* 23d day of *October* in the fourth year of our reign.

G E O R G E, &c. To the sheriffs of *London*, greeting: we command you, that of the goods and chattels of *Elizabeth S.* late of *London*, widow, in your bailiwick, you cause to be made 26 *l.* which *Sarah E.* lately in our court before *P. K.* knt. and his companions, our justices of the bench at *Westminster*, by our writ, and by the judgment of the said court, recovered against her for her damages which she sustained as well by reason of a certain trespass on the case to the same *Sarah* by the said *Elizabeth* lately done, as for her costs and charges by her about her suit in that behalf expended, whereof the same *Elizabeth* is convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court before us for certain reasons of error, appears to us on record; and whereas in our court before us at *Westminster* it is considered, that the said *Sarah* may have her execution against the said *Elizabeth* for the damages, costs and charges aforesaid, by the default of the said *Elizabeth*, as it likewise appears to us on record; and have that money before us wheresoever, &c. to be paid to the said *Sarah* for her damages, costs and charges aforesaid, our said writ of error and *superfedeas* thereon obtained notwithstanding; and have there this writ. Witness, &c.

A fieri facias
on a judgment
in a *scire facias*
quare executionem
non, after a writ
of error.

A N N E, &c. To the sheriff of *Lincoln*, greeting: we command you, that of the goods and chattels of *Thomas A.* late of *Fulstowe* in your county, gent. otherwise called, &c. in your bailiwick, you cause to be made 50 *l.* debt, which *Francis B.* lately in the court of the lord *William* the Third, late king of *England*, before *George T.* knt. and his companions, justices of the same late king of the bench at *Westminster* recovered against him, and also 15 *l.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Thomas* is convicted, as by the inspection of the record and proceedings thereof, which the same late king caused to be brought into the same court of the said late king before the late king himself for certain causes of error, and which in the same court of the said late king before the late king himself, being in all things affirmed, now remaining appears to us on record, as also 10 *l.* 10 *s.* which to the same *Francis* in the same court of the said late king before the late king himself, according to the form of the statute in such case made and provided, were adjudged for his damages, costs and charges, which the same *Francis* sustained by reason of the delay of the execution of the judgment aforesaid, on the pretence of the prosecution of the writ of error of the

A fieri facias in
debt after judg-
ment affirmed
on a writ of
error in the late
reign.

[584]

3 H. 7. c. 10;

same late lord the king, by the said *Thomas* of and upon the premisses as aforesaid prosecuted, whereof the same *Thomas* is convicted, as likewise appears to us on record; and have that money before us from the day of the holy *Trinity* in three weeks, wherefore, &c. to be paid to the said *Francis* for his debt, damages, costs and charges aforesaid; and have there this writ. Witness, &c.

For the defendant on a non-suit of the plaintiff at the trial.
27 H. 8. c. 15.
3 El. c. 2.

A N N E, &c. To the sheriffs of *London*, greeting: we command you, that of the goods and chattels of *William F.* in your bailiwick you cause to be made 16 *l.* 10 *s.* which to *William P.* in our court before us at *Westminster*, according to the form of the statute thereof lately made and provided, were adjudged for his costs and charges about his defence in a certain action of trespass on the case by the said *William F.* against him the said *William P.* in our same court before us brought, in which said action the same *William F.* afterwards was nonsuited, whereof he is convicted, as appears to us on record; and have that money before us at *Westminster* on day next after to be paid to the said *William P.* for his costs and charges aforesaid; and have there then this writ. Witness *J. Holt*, knt. at *Westminster* 4th day of *February* in the first year of our reign.

On a judgment in debt by confession.

W I L L I A M, &c. To the sheriff of *Surry*, greeting: we command you, that of the goods and chattels of *Henry B.* in your bailiwick you cause to be made 168 *l.* debt which *Thomas B.* lately in our court before us at *Westminster* recovered against him, and also 63 *s.* which to the same *Thomas B.* in our same court before us at *Westminster* were adjudged for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *Henry B.* is convicted, as it appears to us on record; and have that money before us at *Westminster* on day next after to be paid to the said *Thomas B.* for the debt and damages aforesaid; and have there then this writ. Witness *J. Holt*, knt. at *Westminster*, &c.

Fieri facias in debt for an executrix against an executrix on a judgment obtained by one testator against the other, revived by *scire facias*.

A N N E, &c. To the sheriffs of *London*, greeting: we command you, that of the goods and chattels which belonged to *Richard G.* bart. viscount *Preston* of the kingdom of *Scotland*, otherwise called *Richard G.* bart. viscount *Preston* of the kingdom of *Scotland*, at the time of his death in the hands and custody of the lady *Anne G.* widow, executrix of the last will and testament of the same *Richard G.* her late husband, to be administered, in your bailiwick, you cause to be made 5200 *l.* debt which *Thomas R.* esq; now deceased in his life-time lately in the court of the lord and lady *William* and *Mary*, late king and queen of *England*, before the late king and queen themselves at *Westminster* recovered against him, and also 13 *l.* 13 *s.* for his damages

damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Richard* was convicted, as it appears to us on record; and whereof in our court before us at *Westminster* it is considered, that *M. R.* widow, relict and executrix of the last will and testament of the said *Thomas R.* her late husband deceased, may have execution against the said *Anne G.* for the debt and damages, costs and charges aforesaid, of the goods and chattels which belonged to the said *Richard G.* at the time of his death in the hands of her the said *Anne G.* to be administered, according to the form and effect of the recovery aforesaid; and have that money before us at *Westminster* on day next after to be paid to the said *Mary R.* for the debt and damages aforesaid; and have there then this writ. Witness *J. Holt*, knt. at *Westminster* 25th day of *June* in the first year of our reign.

Holt. Coleman.

WILLIAM, &c. To the sheriff of *Somerset*, greeting: whereas we lately commanded our sheriff of *Middlesex*, that of the goods and chattels of *John T.* of *Norton Hall* in his county, gent. otherwise called; &c. in his bailiwick, he should cause to be made 400 *l.* debt which *Eliz. J.* widow, executrix of the last will and testament of *Edward J.* her late husband deceased; lately in our court and of the lady *Mary* our late queen before us and our said late queen at *Westminster* recovered against him, and also 23 *s.* which to the same *Elizabeth* in our same court were adjudged for her damages which she sustained as well by reason of the detention of that debt, as for her costs and charges by her about her suit in that behalf expended, whereof the same *John T.* is convicted, as it appears to us on record; and whereon in our court before us at *Westminster* it is considered, that the said *Elizabeth* may have her execution against the said *John* for the debt and damages aforesaid; and that he should have that money before us at *Westminster* on day next after to be paid to the said *Elizabeth* for the debt and damages aforesaid: and our said sheriff of *Middlesex* on that day returned to us, that the said *John T.* hath no goods or chattels in his bailiwick whereof he can cause to be made the debt and damages aforesaid, or any part thereof; upon which on the behalf of the said *Elizabeth* in our court before us it is sufficiently testified, that the said *John T.* hath sufficient goods and chattels in your bailiwick whereof you may cause to be levied the debt and damages aforesaid: therefore we command you, that of the goods and chattels of the said *John T.* in your bailiwick you cause to be made the said 400 *l.* debt, and 23 *s.* for the damages aforesaid; and have that money before us at *Westminster* on day next after to be paid to the said *Elizabeth* for the debt and damages aforesaid; and have there then this writ. Witness, &c.

[585]

Testatum fieri facias for an executrix in debt.

In case.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting:
 we command you, that of the goods and chattels of *Adrian L.* in your bailiwick you cause to be made 23 *l.* which *Richard W.* lately in our court before us at *Westminster* recovered against him for his damages which he sustained as well by reason of the non-performance of certain promises and assumptions to the same *Richard* by the said *Adrian* lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the said *Adrian* is convicted, as it appears to us on record; and have that money before us at *Westminster* on day next after to be paid to the said *Richard* for his damages, costs and charges aforesaid; and have there then this writ. Witness, &c.

For the residue
in debt.

WILLIAM, &c. To the sheriff of *Hereford*, greeting:
 whereas we lately commanded you, that of the goods and chattels of *John P.* otherwise called, &c. in your bailiwick you should cause to be made 240 *l.* debt which *John C.* esq; lately in our court before us at *Westminster* recovered against him, and also 23 *s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as it appears to us on record; and that you should have that money before us at *Westminster* on day next after last past, to be paid to the said *John* for his debt and damages aforesaid: and you on that day returned to us, that you by virtue of that writ to you directed had caused to be made of the goods and chattels of the said *John P.* 50 *l.* parcel of the debt and damages aforesaid, which money before us at the day and place aforesaid you had ready, as by that writ you was commanded; and that the said *John* has no other goods or chattels in your bailiwick whereof you can cause to be made the residue of the debt and damages aforesaid, or any part thereof: therefore we command you, that of the goods and chattels of the said *John* in your bailiwick you cause to be made 191 *l.* 3 *s.* the residue of the said 241 *l.* 3 *s.* and have that money before us at *Westminster* on day next after to be paid to the said *J. C.* for the residue of his debt and damages aforesaid; and have there then this writ. Witness, &c.

[586]
In assault.

WILLIAM, &c. To the sheriff of *Suffex*, greeting:
 we command you, that of the goods and chattels of *Francis T.* in your bailiwick you cause to be made 13 *l.* 1 *s.* which *John N.* lately in our court before us at *Westminster* recovered against him for his damages which he sustained as well by reason of a certain trespass and assault by the said *Francis* on him the said *John* lately committed, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Francis*

is convicted, as it appears to us on record; and have that money before us at *Westminster* on day next after to be paid to the said *John* for his damages, costs and charges aforesaid; and have there then this writ. Witness, &c.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: we command you, that of the goods and chattels of *John P.* of the parish of *St. James Westminster*, blacksmith, and *Frances S.* of the parish of *St. Margaret Westminster*, widow, the bail of *Henry S.* in your bailiwick, you cause to be made 20 l. 2 s. 1 d. which *T. A.* lately in our court before us at *Westminster* recovered against the said *Henry S.* for his damages which he had sustained as well by reason of the non-performance of certain promises and assumptions by him the said *Henry* to the same *T.* lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Henry* is convicted, as it appears to us on record; and whereof in our same court before us at *Westminster* it is considered, that the said *T.* may have his execution against the said *John P.* and *Frances S.* for the damages, costs and charges aforesaid, according to the force, form and effect of a certain recognisance by them the said *John P.* and *Frances S.* in our said court before us for the said *H. S.* at the suit of the said *T. A.* in the suit aforesaid acknowledged, as it likewise appears to us on record; and have that money before us at *Westminster* on day next after to be paid to the said *T.* for his damages, costs and charges aforesaid; and have there then this writ. Witness, &c.

In case against bail after a *scire facias*.

WILLIAM, &c. To the sheriff of *Northampton*, greeting: we command you, that of the goods and chattels which belonged to *Stephen M.* the younger deceased, otherwise called, &c. at the time of his death in the hands and custody of *John L.* and *Mary* his wife, administratrix of all and singular the goods and chattels, rights and credits, of the said *Stephen M.* the younger deceased in your bailiwick, you cause to be made 400 l. debt which *Letitia M.* widow, executrix of the last will and testament of *S. M.* the elder her late husband deceased lately in our court before us at *Westminster* recovered against them, and also 8 l. which to the same *Letitia* in the same court were adjudged for her damages which she sustained as well by reason of the detention of that debt, as for her costs and charges by her about her suit in that behalf expended, whereof the same *John L.* and *Mary* his wife are convicted, as it appears to us on record, if they have so much in their hands to be administered; and if they have not so much in their hands to be administered, then the damages aforesaid of the proper goods and chattels of them the said *John L.* and *Mary*; and have that money before us at *Westminster* on day next after to be paid to the said *Letitia M.* for her debt and damages aforesaid; and have there then this writ, &c.

Fieri facias for an executrix against an administratrix in debt.

*A testatum fieri
facias in debt
against a clerk
of K. B.*

[587]

WILLIAM, &c. To the sheriff of *Middlesex*, greeting;
whereas we lately commanded our sheriffs of *London*, that
of the goods and chattels of *Thomas R.* gent. one of the clerks of
Rowland Helt, esq; and *R. C.* gent. our chief clerk assigned to
inrol pleas in our court before us, present in the same court in
his proper person, otherwise called *Thomas R.* of *Southwark* in
the county of *Surrey*, gent. in their bailiwick, they should cause
to be made 60*l.* debt which *John P.* gent. lately in our court
before us at *Westminster* recovered against him, and also 36*s.*
which to the same *John* in our same court before us at *Westmin-*
ster afore said were adjudged for his damages which he sustained
as well by reason of the detention of that debt, as for his costs
and charges by him about his suit in that behalf expended,
whereof the same *Thomas* is convicted, as it appears to us on re-
cord; and should have that money before us at *Westminster* on
Wednesday next after three weeks of the holy *Trinity*, to be paid
to the said *John* for his debt and damages afore said: and our
said sheriffs of *London* on that day returned to us, that the said
Thomas R. hath no goods or chattels in their bailiwick whereof
they can cause to be made the said debt and damages, or any
part thereof; whereupon on the behalf of the said *John* in our
court before us it is sufficiently testified, that the said *Thomas R.*
hath sufficient goods and chattels in your bailiwick whereof you
may cause to be made the debt and damages afore said: therefore
we command you, that of the goods and chattels of the said *Tho-*
mas R. in your bailiwick you cause to be made the said 60*l.*
debt, and 36*s.* for the damages afore said; and that you have
that money before us at *Westminster* on day next after
to be paid to the said *J. P.* for the debt and damages afore said;
and have there then this writ. Witness *J. H.* kn. at *Westmin-*
ster 9th day of *July* in the 13th year of our reign.

*Fieri facias for
restitution on
the reversal of a
judgment.*

WILLIAM, &c. To the sheriff of *N.* greeting;
whereas *John A.* lately in our court, to wit, in *Michael-*
mas term in the 5th year of our reign, before *G. T.* kn. and his
companions, our justices of the bench at *Westminster*, by our
writ, and by the judgment of the same court, recovered against
R. C. late of, &c. and *M.* his wife, *A. W.* late of, &c. and
E. W. late of, &c. 13*l.* which to the same *John* in our said
court of common bench at *Westminster* were adjudged for his da-
mages which he had by reason of certain trespasses to the same
John by the said *R. M. A.* and *E.* with force and arms, and
against our peace, at *B.* afore said done, whereof they are con-
victed, as by the inspection of the record and proceedings thereof
which we lately caused to be brought into our court before us at
Westminster for certain causes of error in the same to be corrected
appears to us on record: and whereas we have for sundry errors
in the record and proceedings afore said, and also in the remis-
sion

tion of the judgment aforesaid found, reversed and intirely annulled the judgment aforesaid: it is farther considered in our same court before us at *Westminster* aforesaid, that the said *R. M. A.* and *E.* be restored to all things which they lost by reason of the judgment aforesaid; and because the said *John A.* sued out his execution on the judgment aforesaid, and thereupon the said *R. M. A.* and *E.* were taken in execution on the judgment aforesaid, and detained in prison until they paid unto the said *John* the said 13 *l.* Therefore we command you, that of the goods and chattels of the said *John* in your bailiwick you cause to be made the said 13 *l.* and have that money before us at *Westminster* from the day of _____ to restore to the said *R. M. A.* and *E.* the said 13 *l.* to them by our said court before us adjudged upon the reversal of the judgment aforesaid; and have, &c.

JAMES, &c. To the reverend father in Christ *Thomas* lord bishop of *Lincoln*, greeting: we command you, that of the ecclesiastical goods of *John W.* otherwise called *John W.* master of arts, rector of the rectory of *Rand*, otherwise *Raund* in your diocese, you cause to be made 600 *l.* debt which *William F.* lately in our court before us at *Westminster* recovered against him, and also 40 *s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *John* is convicted, as it appears to us on record; and have that money before us at *Westminster* on *Wednesday* next after a month of *Easter*, to be paid to the said *William* for the debt and damages aforesaid, whereof he is as aforesaid convicted; and whereof our sheriffs of *London* have returned to us at *Westminster* on _____ day next after _____ in *Hilary* term last past, that the said *John W.* is a clerk beneficed in your diocese, not having any goods or chattels, nor a lay fee in their bailiwick, whereof they could cause to be made the debt and damages aforesaid, or any penny thereof; and have there then this precept. Witness *R. W. knt. &c.*

A fieri facias of ecclesiastical goods.

The return of the sheriff, that he is a clerk not having a lay fee.

BY virtue of the writ to this schedule annexed and to me directed of the goods and chattels of *L. B.* in the writ to this schedule annexed named, being a lease bearing date the first day of *December* in the 28th year of the reign of the lord *Charles* the Second, late king of *England*, &c. made by *A. B.* to him the said *L. B.* of one messuage, called *Friday's Place*, then lately divided into two or more tenements, situate in a place called *Friday-street* in *New Thame* in my county, to hold to the said *L. B.* his executors, administrators and assigns, from the date thereof for and during and unto the full end and term of 99 years from thence next and immediately ensuing and fully to be compleat and ended, if the said *L.* and *A.* then and yet his wife, and

A lease for years taken on a *feri facias* for part of the debt.

[588]

P. B. the son of the said *L. B.* and *A.* his wife, which said *P.* is now dead, or either or any of them, should so long live, yielding and paying therefore yearly the rent of 12*s.* 8*d.* on the feasts of *St. Thomas* the apostle, the annunciation of the blessed virgin *Mary*, *St. John* the baptist and *St. Michael* the archangel, by even and equal portions, I have caused to be made 100*l.* part of the said 200*l.* in the writ to this schedule annexed mentioned, which said money I have ready at the day and place in the writ to this schedule annexed contained, to be paid to the said *R. P.* in the writ to this schedule annexed mentioned, for part of the debt and damages in the same writ mentioned, as I am in the same writ commanded: and I do farther return, that the said *L.* hath no other or more goods or chattels in my bailiwick whereof I can cause to be made the residue of the said 200*l.* or any parcel thereof, as the writ aforesaid commands and requires.

Fieri facias
against bail on a
recognisance re-
moved out of
C. B. by certi-
orari after judg-
ment affirmed
on error in
K. B.

WILLIAM, &c. To the sheriffs of *London*, greeting: we command you, that of the goods and chattels of *Lyonel W.* of, &c. knt. *S. P.* of, &c. and *W. B.* of, &c. esq; the bail of *L. W.* esq; in your bailiwick, you cause to be made 1800*l.* and have that money before us on _____ wherefoever, &c. to be paid to *Adam B.* according to the form and effect of a certain recognisance by them the said *Lyonel W.* knt. *Samuel* and *William* to the said *Adam* for the said *Lyonel W.* esq; upon our certain writ of error in our court before *H. P.* knt. our chief justice of the bench, at his chambers situate in *Serjeant's-Inn* in *Fleet-street*, *London*, acknowledged, as by the record thereof which we lately for certain reasons caused to be brought into our court before us at *Westminster* appears to us on record; and whereon in our said court before us at *Westminster* aforesaid it is considered, that the said *Adam* may have thereof his execution against the said *L. W.* knt. *Samuel* and *William*, for the said 1800*l.* by the default of them the said *Lyonel*, *Samuel* and *William*, as it appears to us on record; and have there this writ. Witness, &c.

Fieri facias
against the prin-
cipal in debt
after judgment
affirmed in
K. B. to war-
rant proceed-
ings against the
bail.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: we command you, that of the goods and chattels of *William S.* late of, &c. you cause to be made as well 20*l.* 9*s.* 8*d.* debt, which *T. A.* the younger, gent. lately in our court before our justices of the bench at *Westminster* recovered against him, as also 17*l.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *William S.* is convicted, as by the inspection of the record and proceedings thereof which we lately caused to be brought into our court before us by virtue of our writ of error by the said *William* of and upon the premises prosecuted, and which in our court before us in all things affirmed now remaining appears to us on record, as also 9*l.* which to the same *Th-*
ma

mas in our same court before us, according to the form of the statute in such case made and provided, were adjudged for his damages which he sustained by reason of the delay of the execution of the judgment aforesaid, on the pretence of the prosecution of our said writ of error by the said *William* of and upon the premises as aforesaid prosecuted, whereof the same *William S.* is likewise convicted, as it appears to us on record; and have that money before us at *Westminster* from the day of wherefoever we shall then be in *England*, to be paid to the said *Thomas* for the debt, damages, costs and charges aforesaid; and have there this writ. Witness, &c.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: we command you, that of the goods and chattels of *John G.* otherwise called, &c. you cause to be made 120 *l.* debt which *Samuel H.* lately in our court before us at *Westminster* recovered against him, and also 10 *l.* 11 *s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as it appears to us on record, and also 8 *l.* which to the same *Samuel* in our court of exchequer chamber at *Westminster* before our justices of the bench and the barons of our exchequer of the degree of the coif there, according to the form of the statute lately made and provided, were adjudged for his damages, costs and charges which he had by reason of the delay of execution of the judgment aforesaid, by the pretence of the prosecution of our writ of error by him the said *John* of and upon the judgment aforesaid prosecuted, whereof the same *John G.* is convicted, as it appears to us on record; and have that money before us at *Westminster* on, &c. to be paid to the said *Samuel* for the debt, damages, costs and charges aforesaid; and have there then this writ. Witness, &c.

In debt after a verdict and writ of error in the exchequer chamber, and judgment thereon affirmed.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: we command you, that of the goods and chattels of *W. S.* late of, &c. you cause to be made 20 *l.* 9 *s.* 8 *d.* debt which *T. A.* now deceased in his life-time lately in our court before *Edward N. knt.* and his companions, our justices of the bench at *Westminster* recovered against him, and also 17 *l.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as by the inspection of the record and proceedings thereof which we lately for certain causes of error caused to be brought into our court before us at *Westminster* appears to us on record, as also 9 *l.* which to the same *Thomas* in our same court before us at *Westminster* aforesaid, according to the form of the statute thereof lately made and provided, were adjudged for his damages, costs and charges which he had by reason of the delay of execution of the

[589]

Fieri facias on a judgment in C. B. affirmed in K. B. and revived by the administrator by *seire facias*.

3 H. 7. c. 10.

the judgment aforesaid, by the pretence of the prosecution of our writ of error by the said *W. S.* against him the said *Thomas A.* of and upon the premisses prosecuted, upon which said writ of error the judgment aforesaid against the said *W. S.* is in all things affirmed, as it likewise appears to us on record; and whereon in our said court before us at *Westminster* it is considered, that *Judith A.* widow, relict and administratrix of all and singular the goods and chattels, rights and credits, which belonged to the said *Thomas A.* at the time of his death, may have execution against the said *W. S.* for the debt and several damages, costs and charges aforesaid; and have that money before us at *Westminster* from the day, &c. wheresoever we shall then be in *England*, to be paid to the said *Judith* for the debt and several damages, costs and charges aforesaid; and have there this writ. Witness, &c.

Otherwise
against the bail
in debt in K. B.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: we command you, that of the goods and chattels of *R. F.* and *J. W.* the bail of *A. R.* in your bailiwick, you cause to be made 120 *l.* debt which *E. P.* lately in our court before us at *Westminster* recovered against the said *A. R.* and also 26 *s.* which to the same *E. P.* in the same court were adjudged for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *A. R.* is convicted, as it appears to us on record; and whereon in our same court before us at *Westminster* it is considered, that the said *E. P.* may have execution against the said *R. F.* and *J. W.* for the debt and damages aforesaid, according to the force, form and effect of a certain recognizance by them the said *R. F.* and *J. W.* in our said court before us, for the said *A. R.* at the suit of the said *E. P.* in the suit aforesaid acknowledged, as it likewise appears to us on record; and have that money before us at *Westminster* on, &c. to be paid to the said *E. P.* for his debt and damages aforesaid; and have, &c.

A writ of seisin
and fieri facias
in assise of novel
disseisin.

WILLIAM, &c. To the sheriff of *Hereford*, greeting: whereas *Gilbert H.* in our court held at *Hereford* on *Saturday* the 13th day of *March* in the 8th year of our reign, before *Samuel E.* knt. one of our justices assigned to hold pleas in our court before us and *Thomas B.* esq; to the same *Samuel E.* &c. (put in all the titles of the justices) associated by the form of the statute, &c. our justices assigned to take assises in the county aforesaid, by recognizance of assise of novel disseisin which the said *Gilbert H.* arraigned before the said justices against *Griffith R.* gent. and *William D.* master of arts, hath recovered against them the said *G.* and *W.* as well his seisin of the office of register (put in the office as it is in the count) with the appurtenances in our county of *Hereford*, by the view of the recognisors of the assise aforesaid,

forefaid, and alfo 311 l. for his damages which he fufained as well by reafon of the *diffelfin* aforefaid, as for his cofts and charges by him about his affife aforefaid in that behalf expended, whereof the fame *G.* and *W.* are convicted, as by the record and proceedings thereof in our court aforefaid is more fully manifelt and appears: therefore we command you, that you without delay caufe the faid *Gilbert* to have fully feifin of the office aforefaid fo as aforefaid recovered: we likewise command you, that of the goods and chattels of the faid *G.* and *W.* in your bailiwick you caufe to be made the faid 311 l. for the damages, cofts and charges aforefaid in form aforefaid recovered; and have that money before our juftices at the next affife for your county, to be paid to the faid *Gilbert* for his damages, cofts and charges aforefaid. Witnefs, &c.

WILLIAM, &c. To the fheriff of *Hereford*, greeting: whereas *Gilbert H.* in our court held at *Hereford* in the county of *Hereford* on Saturday the 14th day of *March* in the 8th year of our reign, before *Samuel E.* knt. one of our juftices assigned to hold pleas in our court before us, and *Thomas B.* efq; to the faid *Samuel E.* and *Thomas B.* knt. another of our juftices assigned to hold pleas in our court before us, our juftices assigned to take affifes in your county, by the form of the ftatute, &c. this time affociated, the prefence of the faid *Thomas R.* being not expected, by virtue of our writ of *fi non omnes*, &c. by recognifance of affife of *novel diffelfin* which the faid *Gilbert H.* arraigned before the faid juftices againft *Griffith R.* gent. and *W. D.* mafter of arts, recovered againft them the faid *G.* and *W.* his feifin of and in the office of register or registership, &c. with the appurtenances in your county, by view of the recognifors of the affife aforefaid, and alfo 310 l. which to the fame *Gilbert* in our faid court were adjudged for his damages which he fufained as well by reafon of the *diffelfin* aforefaid, as for his cofts and charges by him about his fuit in that behalf expended, whereof the faid *Griffith* and *William* are convicted, as by the record and proceedings thereof in our court aforefaid is more fully manifelt and appears: therefore we command you, that of the lands and chattels of the faid *G.* and *W.* in your bailiwick you without delay caufe to be made the faid 310 l. and have that money before our juftices at the next affifes to be held for your county aforefaid, to be paid to the faid *Gilbert H.* for his damages aforefaid, remitting then to us this our writ. Witnefs *Samuel E.* knt. and *Thomas B.* efq; at the day of in the 8th year of our reign.

Bretton.

[590]

Fieri facias for damages on a writ of affife of *novel diffelfin*.

13 E. 1. c. 30.
12 E. 2. c. 4.

Fieri facias of
ecclesiastical
goods directed
to the bishop.

WILLIAM, &c. To the right reverend father in Christ
Henry lord bishop of *London*, greeting: we command you,
that of the ecclesiastical goods of *J. H.* clerk, otherwise called
J. H. of *B.* in the county of *Huntingdon*, clerk in your diocese,
you cause to be made 400 *l.* debt which *W. G.* lately in our
court and of our late queen before us and our late queen at *West-*
minster recovered against him, and also 43 *s.* which to the same
W. in our same court before us and our said late queen at *West-*
minster aforesaid were adjudged for his damages which he sus-
tained as well by reason of the detention of that debt, as for his
costs and charges by him about his suit in that behalf expended,
whereof the same *John* is convicted, as it appears to us on re-
cord; and whereof in our court before us at *Westminster* it is
considered, that the said *W.* may have his execution against the
said *J.* for the debt and damages aforesaid; and have that money
before us at *Westminster* on day next after to be
paid to the said *W.* for his debt and damages aforesaid; and
whereof our sheriffs of *London* have returned to us at *Westminster*
on day next after in this same term, that the said
J. H. is a clerk beneficed in your diocese, not having any goods
or chattels, nor a lay fee in their bailiwick, whereof they could
cause to be made the debt and damages aforesaid, or any penny
thereof; and have there then this precept. Witness *J. Hale*,
knt. at *Westminster* 13th day of *February* in the 11th year of our
reign.

Fieri facias
against the sur-
vivor in debt
after a *scire*
facias.

WILLIAM and Mary, &c. To the sheriff of *Middle-*
sex, greeting: we command you, that of the goods and
chattels of *Thomas O.* esq; in your bailiwick you cause to be made
84 *l.* debt which *Francis O.* widow, lately in our court before us at
Westminster recovered against him and one *Hugh H.* clerk, which
said *Hugh* afterwards died, and also 71 *s.* for her damages which
she sustained as well by reason of the detention of that debt, as
for her costs and charges by her about her suit in that behalf ex-
pended, whereof the same *Thomas* is convicted, as it appears to
us on record; and whereof in our said court before us at *West-*
minster it is considered, that the said *Frances* may have her exe-
cution against him the said *Thomas O.* who survived the said
Hugh, by the default of him the said *Thomas O.* and have that
money before us at *Westminster* on day next after to
be paid to the said *Frances* for her debt and damages aforesaid;
and have there then this writ. Witness, &c.

[591]
Fieri facias for
the defendant on
a non suit.

WILLIAM, &c. To the sheriffs of *London*, greeting:
we command you, that of the goods and chattels of *Tho-*
mas N. in your bailiwick you cause to be made 6 *l.* 6 *s.* and have
that money before us at *Westminster* on day next after

to be paid to *John S.* for his costs and charges by him sustained about his defence in a certain action of trespass on the case by him the said *Thomas* against the said *John* in our said court before us at *Westminster* prosecuted, and to the same *John* by our same court, according to the form of the statute thereof lately made and provided adjudged, because the same *Thomas* did not afterwards prosecute that action whereof the same *Thomas* is convicted, as it appears to us on record; and have there then this writ. *Witness, &c.*

23 H. 8. c. 15.
8 El. c. 2.

ANNE, &c. To the sheriff of *Middlesex*, greeting: we command you, that of the goods and chattels of *John B.* and *John Doe* of *London*, gent. the bail of *Samuel A.* gent. otherwise called, &c. in your bailiwick, you cause to be made 100 l. for a debt which *Charles S.* lately in the court of the lord *William* the Third, late king of *England*, before the late king himself at *Westminster* recovered against the said *Samuel A.* and also 31 s. which to the same *Charles* in the same court of the said late king were adjudged for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Samuel* is convicted, as it appears to us on record; and whereof in our same court before us at *Westminster* it is considered, that the said *Charles* may have his execution against the said *John B.* and *J. D.* for the debt and damages aforesaid, according to the force, form and effect of a certain recognisance by them the said *J. B.* and *J. D.* in the said court of the said late king before the late king himself at *Westminster*, for the said *Samuel A.* at the suit of the said *Charles S.* in the suit aforesaid acknowledged, by the default of them the said *J. B.* and *J. D.* as it appears likewise to us on record; and have that money before us at *Westminster* on day next after to be paid to the said *Charles* for his debt and damages aforesaid; and have there then this writ. *Witness, &c.*

Fieri facias
against the bail
to warrant a cā.
sa. after a *scire*
facias.

ANNE, &c. To the sheriff of *Middlesex*, greeting: we command you, that of the lands and chattels of *Alexander H.* late of *Dowgate-hill*, *London*, merchant, (one of the bail of *Colen G.*) being in your bailiwick, you cause to be made 240 l. and of the lands and chattels of *James G.* late of *Fan Court* in *Fenchurch-street*, *London*, bookfeller, (another of the bail of the said *Colen*) being in your bailiwick, you cause to be made 240 l. and have that money before us on wheresoever we shall then be in *Great Britain*, to be paid to *Thomas L.* esq; according to the form and effect of the adjudication of execution on a certain recognisance by them the said *A. H.* and *J. C.* to the said *Thomas L.* for the said *Colen* in our court before *Thomas T.* knt. and his companions, our justices of the bench at *Westminster* acknowledged, as by the record and proceedings of the adjudication

Fieri facias
against bail on
a judgment in
a *scire facias*
quare executio-
nem non on error
brought in K. B.

tion of execution thereof, which we lately for certain reasons caused to be brought into our court before us, appears to us on record; and whereof in our same court before us at *Westminster* it is considered, that the said *Thomas L.* may have thereof his execution against the said *A.* and *J.* for the said several sums of 240 *l.* and 240 *l.* in form aforesaid respectively acknowledged to be respectively levied on their lands and chattels, by the default of them the said *A.* and *J.* as it appears likewise to us on record; and have there this writ. *Witness, &c.*

Fieri facias for
the residue in
debt.

[592]

ANNE, &c. To the sheriff of *Middlesex*, greeting: where-
as we commanded our late sheriff of *Middlesex*, that of the goods and chattels which belonged to *James E.* of the city of *York* in the county of *York*, bart. deceased, otherwise called, &c. in the hands and custody of the lady *Rebecca E.* widow, executrix of the last will and testament of the same *James E.* her late husband to be administered in his bailiwick, he should cause to be made 60 *l.* for a debt which *Michael B.* executor of the last will and testament of *J. B.* his late brother deceased lately in the court of the lord *William* the Third, late king of *England*, &c. before the late king himself at *Westminster* recovered against him, and also 46 *s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *James* was convicted, as it appears to us on record; and whereof in our court before us at *Westminster* it is considered, that the said *M. B.* may have execution against the said *Rebecca* for his debt and damages, costs and charges aforesaid, of the goods and chattels which belonged to the said *James E.* at the time of his death in the hands of her the said *Rebecca* to be administered, according to the form and effect of the recovery aforesaid; and that he should have that money before us at *Westminster* on *Thursday* next after three weeks of *St. Michael* last past, to be paid to the said *M. B.* for his debt and damages aforesaid: and our said sheriff of *Middlesex* on that day returned to us, that by virtue of the writ aforesaid to him directed, he had caused to be made of the goods and chattels which belonged to the said *James*, in the hands of the said lady *Rebecca*, 9 *l.* part of the debt and damages aforesaid, which said money he had ready before us at the day and place aforesaid, to be paid to the said *M. B.* in part of the debt and damages aforesaid, as by that writ he was commanded; and that the same *Rebecca* hath not any other goods or chattels which belonged to the said *James*, in the hands of her the said *Rebecca* in his bailiwick, whereof he could cause to be made the residue of the debt and damages aforesaid, or any part thereof: therefore we command you, that of the goods and chattels which belonged to the said *James E.* in the hands and custody of the said lady *Rebecca*, to be administered in your bailiwick, you cause to be made 53 *l.* 6 *s.* residue of the said 62 *l.* 6 *s.* and have that money before us at *Westminster* on *Friday* next after the octave of *St.*

St. Hilary, to be paid to the said *Michael* for the residue of the debt and damages aforesaid; and have there then this writ. Witness, &c.

ANNE, &c. To the sheriff of *Suffex*, greeting: we command you, that of the goods and chattels of *Richard T.* gent in your bailiwick you cause to be made 10*l.* which to *W. G.* gent. in our court before us at *Westminster*, according to the form of the statute thereof lately made and provided, were adjudged for his costs and charges about his defence in a certain action of trespass against him the said *W. G.* at the suit of the said *Richard T.* in our same court before us sustained, whereof he is convicted, as it appears to us on record; and have that money before us at *Westminster* on *Tuesday* next after 15 days of *St. Martin*, to be paid to the said *W. G.* for his costs and charges aforesaid; and have there then this writ. Witness, &c.

For the defendant for costs in trespass.
23 H. 8. c. 15.
8 El. c. 2.

ANNE, &c. To the sheriffs of *London*, greeting: we command you, that of the goods and chattels of *Simon F.* late of *London*, merchant, otherwise called, &c. in your bailiwick, you cause to be made 1000*l.* for a debt which *Gilbert P.* now deceased in his life-time lately in our court before *Thomas* lord Treasurer, baron of *Bromham*, and his companions our justices of the bench, by our writ, and by the judgment of the same court, recovered against him, and also 15*l.* 10*s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *Simon* is convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court before us at *Westminster*, by virtue of our certain writ of error by the said *Simon* of and upon the premises prosecuted, and which in our court before us, being in all things affirmed, now remaining appears to us on record; and likewise 14*l.* which to the same *Gilbert* in our same court before us at *Westminster*, according to the form of the statute in such case thereof lately made and provided, were adjudged for his damages, costs and charges which he sustained by reason of the delay of execution of the judgment aforesaid, by the pretence of the prosecution of our said writ of error, by the said *Simon* of and upon the premises as aforesaid prosecuted, and whereof the said *Simon* is likewise convicted, as it appears also to us on record: and whereas the same *Gilbert P.* afterwards, to wit, on the first day of *March* in the 12th year of our reign at *London* aforesaid died intestate of the debt and damages, costs and charges aforesaid, or any part thereof, unsatisfied; after whose death, to wit, on the 5th day of *March* in the 12th year of our reign above said, at *London* aforesaid, administration of all and singular the goods and chattels, rights and credits, which belonged to the said *Gilbert P.* at the time of his

Fieri facias for an administratrix on a judgment in C. B. affirm'd in K. B. and revived by *seire facias*.

3 H. 7. 10.

8 & 9 W. 3.
c. 10. § 3.

his death, by *Thomas* by divine providence archbishop of *Canterbury*, primate and metropolitan of all *England* (to whom the commission of the administration afore said of right belonged) to one *Elizabeth P.* widow and relict of the said *Gilbert P.* in due form of law was committed; and whereon in our same court before us at *Westminster* it is considered, that the said *Elizabeth* may have execution against the said *Simon* for the debt, damages, costs and charges afore said, and also for 7*l.* for her costs and charges by our court before us at *Westminster*, according to the form of the statute in such case thereof lately made and provided, to the same *Elizabeth* adjudged, whereof the said *Simon* is convicted, as it also appears to us on record; and have that money before us at *Westminster* from the day of the holy *Trinity* in 15 days, wheresoever we shall then be in *England*, to be paid to the said *Elizabeth* for the debt and several damages, costs and charges afore said; and have there this writ. Witnes, &c.

[593]

*Testatum fieri
facias for the
residue after ex-
ecution adjudg-
ed on a scire
facias.*

ANNE, &c. To the sheriff of *Monmouth*, greeting: whereas we lately commanded our sheriffs of *London*, that of the goods and chattels of *J. P.* in their bailiwick they should cause to be made 200*l.* for a debt which *W. J.* lately in our court before us at *Westminster* recovered against him, and also 63*l.* 3*s.* which to the same *W.* lately in our same court were adjudged for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *John* is convicted, as it appears to us on record; and whereof in our said court before us at *Westminster* afore said it is considered, that the said *William* may have his execution against the said *John* for the debt and damages afore said, and that they should have that money before us at *Westminster* on *Monday* next after the morrow of *St. Martin*, to be paid to the said *William* for the debt and damages afore said; and our said sheriffs of *London* on that day returned to us, that the said *John* hath no goods or chattels in their bailiwick whereof they could cause to be made the said debt and damages, or any part thereof; upon which on the behalf of the said *William* in our court before us it was sufficiently testified, that the said *John* had sufficient goods and chattels in your bailiwick on which the debt and damages afore said might be levied; whereupon we commanded the then sheriff of the county of *Monmouth*, that of the goods and chattels of the said *J. P.* in your bailiwick he should cause to be made the debt and damages afore said, and that he should have that money before us at *Westminster* on *Friday* next after the octave of the purification of the blessed virgin *Mary* last past, to be paid to the said *William* for the debt and damages afore said; and our said sheriff of *Monmouth* on that day returned to us, that by virtue of that writ to him directed, he had caused to be made of the goods and chattels of the said *John P.* 34*l.* 7*s.* parcel of the debt and damages afore said,

aforesaid, which said money he had ready before us at the day and place aforesaid, as by that writ he was commanded; and that he the said *J. P.* had no other or more goods and chattels in his bailiwick whereof he could cause to be made the residue of the debt and damages aforesaid: and now on the behalf of the said *William* in our court before us it is farther sufficiently testified, that the said *John* hath sufficient goods and chattels in your bailiwick to satisfy the same *William* the residue of the debt and damages aforesaid: therefore we command you, that of the goods and chattels of the said *John* in your bailiwick you cause to be made 168*l.* 16*s.* the residue of the said 203*l.* 3*s.* and have that money before us at *Westminster* on *Friday* next after a month of *St. Michael*, to be paid to the said *William* for the residue of the debt and damages aforesaid; and have there then this writ. Witness, &c.

Habeas Corpus.

[594]

G E O R G E, by the grace of God, of *Great Britain, France* and *Ireland* king, defender of the faith, &c. To the warden of our prison of the *Fleet*, greeting: we command you, that the body of *Robert P.* esq; in our prison under your custody, as it is said, detained, under a safe and secure conduct, together with the day and cause of his caption and detention, by whatever name the same *Robert* may be called in the same, you have before us at *Westminster* on day next after to answer to the governor of the lands, possessions, revenues and goods of the hospital of king *James*, founded in *Charter-house* within the county of *Middlesex*, at the humble petition and sole costs and charges of *Thomas S.* esq; in a plea of trespass, and also to the bill of the said governor against him the said *Robert* for 1800*l.* debt, according to the custom of our court before us to be exhibited; and farther to do and receive what our court before us shall then and there consider concerning him in this behalf; and have there then this writ. Witness *Thomas* lord *Parker*, baron of *Macclesfield*, at *Westminster* 26th day of *November* in the 4th year of our reign.

Habeas corpus to remove a person from the *Fleet* to the *K. B.*

W I L L I A M, &c. To the mayor, aldermen and sheriffs of the city of *London*, greeting: we command you, and every of you, that the body of *Joseph P.* in our prison under your or some of your custody, as it is said, detained, under a safe and secure conduct, together with the day and cause of his caption and detention, by whatever name the same *Joseph* may be called in the same, you have before our trusty and beloved *John Holt*, knt. our chief justice assigned to hold pleas in our
VOL. II. C c court

Otherwise to remove a cause out of the sheriff's court in *London*.

Select Writs.

court before us, at his chambers situate in *Serjeants-Inn* in *Chancery-lane, London*, immediately after the receipt of this writ, to do and receive what our same chief justice shall then and there consider concerning him in this behalf; and have there then this writ. Witness, &c.

Directions to the marshal's court. } **T**O the judges of our court of our palace *Westminster*, and every of them, greeting: we command you, and every of you, that the body, &c. to; and have there then this writ. Witness, &c.

The N O T E.

Midd^r, to wit. *Habeas corpus* for *Joseph P.* to do and receive, returnable immediately.

Lilly.

Then in form of a bail-piece without duty.

Lilly, } *Midd^r*, to wit. Let there be a *habeas corpus* to do and attorney. } receive, returnable immediately for *Joseph P.*

[595]

Habeas corpus
upon a *capias* in
withernam.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: we command you, that the body of *Daniel W.* in our prison under your custody, as it is said, detained, under a safe and secure conduct, together with the day and cause of his caption and detention, by whatever name the same *Daniel* may be called in the same, you have before us at *Westminster* immediately after the receipt of this writ, to do and receive all and singular those things which our same court before us shall then and there consider concerning him in this behalf; and have there then this writ. Witness *J. Holt*, knt. at *Westminster* the 4th day of *November* in the 12th year of our reign.

Holt. Coleman.

This is made out by rule of court.

Habeas corpus
to give evidence.

WILLIAM, &c. To *W. B.* esq; being marshal of our *Marshalsea*, before us, greeting: we command you, that the body of *E. B.* in our prison under your custody, as it is said, detained, under a safe and secure conduct, by whatever name the said *E.* may be called in the same, you have before our trusty and beloved *John Holt*, knt. our chief justice assigned to hold pleas in our court before us at *Westminster* in the great hall of pleas there, on *Thursday* the 29th day of this instant month *November* at 8 o'clock before noon of the same day, there to testify the truth of his knowledge in a certain cause in our court before us now depending, and then and there to be tried, between *A. B.* plaintiff, and *C. D.* defendant, in a plea of breach of covenant; and then immediately after the said *E. B.* shall then and there have given his testimony before the said chief justice, to return him the said *E. B.* to the same our pri-
son

son under safe and secure conduct; and have there then this writ. Witness, &c.

ANNE, &c. To the sheriff of *Middlesex*, greeting: we command you, that the body of *J. B.* by whatever name he may be called, in our prison under your custody detained, as it is said, together with the day and cause of the caption and detention of the same *J. B.* you have before *R. T.* esq; one of our justices of the bench, at his chambers situate in *Serjeants-Inn* in *Fleet-street, London*, immediately after the receipt of this writ, to do and receive what our same justice shall then and there consider concerning him in this behalf; and have there this writ. Witness *T. Trevor*, knt. &c.

Habeas corpus cum causa re- turnable before a Judge of the C. B.

ANNE, &c. To the judges of our court of our palace *Westminster*, and every of them, greeting: we command you, and every of you, that the body of *John K.* in our prison under your custody, as it is said, detained, under a safe and secure conduct, together with the day and cause of his caption and detention, by whatever name the same *John K.* may be called in the same, you have before us at *Westminster* on *Friday* next after three weeks of *St. Michael*, to answer to *John B.* in a plea of trespass, and also to the bill of him the said *John B.* against the said *J. K.* for 34*l.* on promise, according to the custom of our court before us to be exhibited, and to do and receive all and every thing which our same court before us shall then and there consider concerning him in this behalf; and have there then this writ. Witness *T. P.* knt. at *Westminster* 25th day of *June* in the 12th year of our reign.

Habeas corpus to answer to the marshal's court.

WILLIAM, &c. To the sheriff of *Monmouth*, greeting: we command you, that the body of *S. P.* by you taken and in our prison under your custody, altho' sick, detained, as by your return sent into our court before us manifestly appears to us, you have before us at *Westminster* on _____ day next after _____ to answer to the most noble *Henry* duke of *B.* in a plea of trespass, and also to the bill of the said duke against him the said *S.* for 100*l.* debt; and have there then this writ. Witness, &c.

Ha' corp' tho' sick.

Habere facias possessionem.

In ejectment af-
ter a scire fa-
cias.

ANNE, &c. To the sheriff of *Oxford*, greeting: whereas *Richard J.* lately in our court before us at *Westminster*, by our writ, and by the judgment of the same court, recovered against *T. B.* late of *London*, gent. his term yet to come of and in 6 messuages, 200 acres of land, 40 acres of meadow, 100 acres of pasture, and 20 acres of wood with the appurtenances in *S.* and in the parish of *Stanton Harcourt* in your county, and also of and in the rectory of *Stanton Harcourt* with the appurtenances in your county, which one *W. M.* on the seventh day of *April* in the second year of our reign demised to the same *Richard* for a term of years which is not yet past, to wit, from the first day of the same month of *April* unto the full end and term of ten years from thence next ensuing and fully to be compleat and ended: by virtue of which said demise the same *Richard* into the rectory and tenements aforesaid with the appurtenances entred, and was thereof possessed, until the said *Thomas* afterwards, to wit, on the same 7th day of *April* in the second year of our reign aforesaid, with force and arms, &c. into the rectory and tenements aforesaid with the appurtenances in and upon the possession of the said *Richard* thereof entred, and him the said *Richard* from his farm aforesaid, his term aforesaid then and yet not ended, ejected, expelled and amoved, and him the said *Richard* from his possession thereof kept out, and yet doth keep out, whereof he is convicted, as it appears to us on record; and whereof in our same court before us it is considered, that the said *Richard J.* may have against the said *Thomas B.* his execution of that judgment, according to the force, form and effect of the recovery aforesaid, as it appears also to us on record; therefore we command you, that you without delay cause the said *Richard* to have his possession of his term aforesaid yet to come of and in the said rectory and tenements with the appurtenances; and how you shall execute this our writ certify to us from the day of _____ wheresoever, &c. returning to us this our writ. Witness, &c.

Otherwise,

WILLIAM, &c. To the sheriff of *Lincoln*, greeting: whereas *T. L.* lately in our court before us at *Westminster*, by our writ, and by the judgment of the same court, recovered against *L. L.* late of *London*, gent. his term yet to come of and in the moiety of the manor of *Fursby*, otherwise *Frisby*, (and so name the parcels in your declaration) which *A. M.* spinster, on the 18th day of *January* in the 11th year of our reign, at *Spalding* in your county, demised to the same *Thomas*, to have and to hold to the same *T.* and his assigns from the 15th day of the same month of *January* unto the full end and term of five years from

from thence next ensuing and fully to be compleat and ended : by virtue of which said demise the same *T. L.* into the moiety of the manor and tenements aforesaid with the appurtenances entered, and was thereof possessed, until the said *L. L.* afterwards, to wit, on the same 18th day of *January* aforesaid, with force and arms, &c. into the moiety of the manor and tenements aforesaid with the appurtenances, which the said *A. M.* to the same *T. L.* in form aforesaid demised for the term aforesaid, which is not yet ended, entred, and him the said *T. L.* from his farm aforesaid ejected, whereof the same *L. L.* is convicted, as it appears to us on record : therefore we command you, that you without delay cause the said *Thomas L.* to have his possession of his term aforesaid yet to come of and in the moiety of the manor and tenements aforesaid with the appurtenances ; and how you shall have executed this our writ certify to us wheresoever we shall then be in *England* ; and have there this writ. Witness, &c.

WILLIAM, &c. To the sheriff of *Cambridge* greeting : whereas *T. S.* hath lately in our court before *George T. knt.* and his companions, our justices of the bench, at *Westminster*, by our writ and by the judgment of the same court, recovered against *J. B.* late of in your county, esq; his term yet to come of and in the rectory of *Abington Magna*, and 10 messuages, (*so mention the parcels*) with the appurtenances in *Abington Magna* and *Abington Parva* in your county, which *C. B. gent.* on the 20th day of *November* in the 11th year of our reign demised to the same *Thomas*, to have and to hold to the said *Thomas* and his assigns from the 20th day of the same month of *November* unto the full end and term of five years from thence next ensuing and fully to be compleat and ended : by virtue of which said demise the same *Thomas* into the rectory and tenements aforesaid with the appurtenances entred, and was thereof possessed, until the said *John* afterwards, to wit, on the said 20th day of *November* in the 11th year aforesaid, with force and arms, &c. into the rectory and tenements aforesaid in and upon the possession of the said *Thomas* entred, and him the said *Thomas* from his farm aforesaid ejected, and also 13*l.* 6*s.* 8*d.* for his damages which he sustained as well by reason of the trespass and ejectment aforesaid, as for his costs and charges by him about his suit in that behalf expended, whereof the same *John* is convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court before us for certain causes of error, and which in our same court before us, being in all things affirmed, appears to us on record, and also 8*l.* 10*s.* which to the same *Thomas* in our same court before us at *Westminster* aforesaid, according to the form of the statute thereof lately made and provided, were adjudged for his damages, costs and charges which he sustained by reason of the delay of execution of the judgment aforesaid, on pretence of

[597]

Otherwise, and a *seri facias* on a judgment affirmed in *K. B.*

3 H. 7. c. 10.

the prosecution of our said writ of error by the said *John* against the said *Thomas* of and upon the premises prosecuted, and whereof the same *John* is likewise convicted, as it appears also to us on record: therefore we command you, that you without delay cause the said *Thomas* to have his possession of his term aforesaid yet to come of and in the rectory and tenements aforesaid with the appurtenances; and what you shall do therein certify to us on _____ wheresoever we shall then be in *England*: we likewise command you, that of the goods and chattels of the said *John B.* in your bailiwick you cause to be made as well the said 13*l.* 6*s.* 8*d.* which the said *Thomas* hath in form aforesaid recovered against the said *John* for his damages which he sustained as well by reason of the trespass and ejectment aforesaid, as for his costs and charges by him about his suit in that behalf expended, as also the said 8*l.* 10*s.* which to the said *Thomas* in our same court before us were in form aforesaid adjudged by reason of the delay of execution of the judgment aforesaid, on pretence of the prosecution of our said writ of error; and have that money before us on the said day, to be paid to the said *Thomas* for his several damages, costs and charges aforesaid; and have there this writ. Witness, &c.

[598]

Habere facias seisinam.

Writ of seisin
in dower after
judgment af-
firmed in K. B.

WILLIAM, &c. To the sheriff of *Stafford*, greeting:
whereas *Snsanna J.* widow, who was the wife of *John J.* yeoman, hath lately in our court before *George T. knt.* and his companions, our justices of the bench at *Westminster*, by our writ of dower, whereof she hath nothing, and by the judgment of the same court, recovered against *W. J. clerk*, her seisin of the third part of one messuage, 10 acres of land, &c. as the dower of her the said *S.* of the endowment of the said *J. J.* her late husband, whereof the same *W.* is convicted, as by the inspection of the record and proceedings thereof, which we caused to be brought into our court before us, by virtue of our writ of error by the said *W.* of and upon the premises prosecuted, and which in our same court before us in all things affirmed now remaining appears to us on record: therefore we command you, that you without delay deliver to the said *S.* seisin of the third part of the said one messuage, &c. to hold to her in severa'ty by metes and bounds, according to the force, form and effect of the recovery and affirmance aforesaid; and how you shall execute this our writ certify to us on the morrow of the ascension of the Lord wheresoever, &c. returning to us this our writ. Witness, &c.

ANNE, &c. To the sheriff of *Middlesex* greeting: where-
as *Nicholas W.* gent. in the court of the lord *William* the
third, late king of *England*, &c. before the late king himself at
Westminster, by the writ of the same late king of assise of *novel*
disseisin which the said *Nicholas W.* arraigned before the said late
king at *Westminster* against *William S.* esq; and by the judgment
of the same court, hath recovered against him the said *W. S.* his
seisin of the office of marshal of the *Marshalsea* of the said late
lord the king before the king himself, with the appurtenances
in the parish of *St. Margaret Westminster* in our county of *Mid-*
dlesex, by the view of the recognitors of the assise aforesaid,
whereof the same *W. S.* is convicted, as by the record and
proceedings thereof in our court before us remaining more fully
is manifest and appears: therefore we command you, that you
without delay cause the said *Nicholas W.* to have full seisin of
the office of marshal of the *Marshalsea* aforesaid with the ap-
purtenances; and how you shall execute this our writ certify to
us at *Westminster* from the day of *Easter* in 15 days, wheresoever,
&c. then returning to us this our writ, Witness *J. Holt*, knt,
at *Westminster*, &c.

Writ of seisin
on a writ of
assise of *novel*
disseisin.

Inquiry.

[599]

WILLIAM, &c. To the sheriff of *Middlesex*, greet-
ing: whereas *Martin T.* lately in our court before us at
Westminster, by bill, without our writ, impleaded *Thomas R.* be-
ing in the custody of the marshal of our *Marshalsea* before us,
for this, to wit, that whereas the said *Thomas* on the first day of
December in the 12th year of our reign, at *Westminster* in your
county, was indebted to the said *Martin* in 50 l. (*so on the de-*
claration verbatim to) hath altogether refused, and yet doth re-
fuse, to the damage of him the said *Martin*, as he said, 55 l.
And therefore he then produced the suit, &c. And it was in
such manner proceeded in our same court before us at *Westmin-*
ster that it was considered by the said court, that the said *Martin*
ought to recover his damages against the said *T.* by reason of the
non-performance of the several promises and assumptions afore-
said: but because our court before us doth not know what da-
mages the said *Martin* hath sustained by reason of the premises
aforesaid, therefore we command you, that by the oath of 12
good and lawful men of your bailiwick you diligently inquire
what damages the said *Martin* hath sustained, as well by reason
of the non-performance of the several promises and assumptions
aforesaid, as for his costs and charges by him about his suit in

An inquiry in
an action on the
case.

this behalf expended ; and the inquisition which you shall thereon make send to us at *Westminster* on day next after under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness *J. Holt*, knt. at *Westminster* 20th day of *June* in the 13th year of our reign.

An inquiry for the mesne profits after judgment in ejectment affirmed on error in the exchequer chamber.

CHARLES, &c. To the sheriff of *York*, greeting :
 whereas *William B.* lately in our court before us at *Westminster* on day next after in *Easter* term in the 32d year of our reign, by bill, without our writ, and by the judgment of the same court recovered against *Elizabeth B.* widow, the possession of his term yet to come of and in six messuages, 1000 acres of land, 1000 acres of meadow, 1000 acres of pasture, 100 acres of land, called the *Meere*, covered with water, with the appurtenances in the parish of *Hatfield* and *Thorne* in the county of *York* aforesaid, which *John H.* esq; on the 20th day of *November* in the 31st year of our reign at *Hatfield* in your county demised to the said *William*, to have and to hold to the said *William* and his assigns from the feast of *St. Martin* the bishop in the winter then last past unto the full end and term of seven years from thence next ensuing and fully to be compleat and ended, whereof the same *Elizabeth* is convicted, as it appears to us on record : and whereas also afterwards, to wit, on *Friday* the 11th day of *February* in the 33d year of our reign in our court of exchequer chamber at *Westminster*, before our justices of the bench at *Westminster* and the barons of our exchequer of the degree of the coif, it was considered, that the judgment aforesaid should be in all things affirmed, as by the record and proceedings thereof in our said court before us into the said court of our exchequer chamber aforesaid, by virtue of our writ of error, by the said *Elizabeth* of and upon the premises before the justices and barons aforesaid in the said court of exchequer chamber prosecuted, transmitted, and afterwards out of the same court of exchequer chamber aforesaid into our said court before us at *Westminster* duly remitted, and there now of record remaining more fully appears ; and the said *W.* according to the form of the statute thereof lately made and provided, ought to recover his damages for the mean profits of the tenements aforesaid with the appurtenances, and for waste in the same committed after the rendition of the judgment aforesaid : but because our court now here doth not know to how much the issues and profits of the tenements aforesaid with the appurtenances from the day of the rendition of the judgment aforesaid, to wit, the said *Wednesday* next after 15 days of *Easter* in the 32d year of our reign aforesaid until the said day of the affirmance of the judgment aforesaid, do amount, and what damages the said *William* hath sustained by reason of any waste in the same tenements with the appurtenances after the said day of the rendition of that judgment committed, we command you, that by good and lawful men of your bailiwick you diligently inquire to how much the issues and profits

[600]

13 E. 1. c. 14.

profits of the tenements aforesaid with the appurtenances from the day of the rendition of the judgment aforesaid unto the said day of the affirmance of the judgment aforesaid do amount, according to the true value of the same tenements with the appurtenances, and also what damages the same *W.* hath sustained by reason of any waste in the same tenements with the appurtenances from the said day of the rendition of the judgment aforesaid unto the said day of the affirmance of that judgment committed; and the inquisition which you shall thereon take send to us at *Westminster* on day next after under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness *Francis P. kn.* at *Westminster* 12th day of *June* in the 33d year of our reign.

AN inquisition indented taken at the castle of *York* on the 18th day of *September* in the 33d year of the reign of the lord *Charles* the Second, by the grace of God, of *England, Scotland, France* and *Ireland* king, defender of the faith, &c. before me *Richard G. bart.* sheriff of the county aforesaid, by virtue of the writ of the lord the king to me directed, and to this inquisition annexed, by the oath of *John B. Joshua S. T. S. T. D. J. E. R. B. J. W. J. D. N. E. G. N. M. B. M. T. and T. W.* good and lawful men of my bailiwick, who being charged and sworn say on their oath, that the issues and profits of the tenements in the said writ specified, from the day of the rendition of the judgment aforesaid in the writ aforesaid likewise mentioned, to wit, from the said *Wednesday* next after 15 days of *Easter* in the 32d year of the reign of the lord the now king, unto the day of the affirmance of the judgment aforesaid in the said writ specified, do amount to 57*l.* 19*s.* 6*d.* And the jurors aforesaid on their oath aforesaid farther say, that *William B.* in the said writ named, hath not sustained any damage by reason of any waste in the same tenements with the appurtenances at any time after the rendition of the judgment aforesaid unto the affirmance of the same, to the knowledge of the jurors aforesaid. In witness whereof as well I the said sheriff as the jurors aforesaid our seals to this inquisition have severally put, the day and year above said, &c.

Richard Graham, bart. sheriff.

ANNE, &c. To the sheriff of *Middlesex*, greeting: where-as *John S.* late of the parish of *St. Clement Danes* in your county, esq; was summoned to be in our court before us to answer to *William P.* esq; in a plea, why on the 14th day of *October* in the first year of our reign, at the parish of *St. Clement Danes* in your county, in a certain place there called a chamber in *Devereux Court*, he took the goods and chattels of him the said *William*, to wit, one bed, one bedstead, one bolster, one pillow, four curtains vallance, two blankets, one quilt, one chest of drawers,

Inquiry of damages in replevin where judgment was given for the defendant on demurrer.

[601]

Demurrer.

Joinder.

Judgment for
the defendant.

drawers, 20 books, one looking-glass, one large brush, one large trunk, and four chairs, and unjustly detained them, against surety and pledges, until, &c. And the said *John S.* came and in our same court before us alledged and said, that the said *William* ought not to have or maintain his action aforesaid thereof against him, because he said, that as to the said one bed, one bedstead, one bolster, one pillow, four curtains vallance, two blankets, one quilt, one looking-glass and 10 books, parcel of the goods and chattels aforesaid in the declaration aforesaid mentioned, the property of those goods and chattels at the said time of the taking of the same was in him the said *John*; without that, that the property of those goods and chattels at the said time of the taking of the same was in the said *William*, as by the declaration aforesaid was above supposed: and this he was ready to verify: and as to the said one chest of drawers, one large brush, one large trunk, 10 other books and four chairs, the residue of those goods and chattels last mentioned, the property of the same goods and chattels was in one *Richard F.* without that, that the property of the residue of those goods and chattels was in the said *William*, as by the declaration aforesaid was above supposed; and this he was ready to verify and prove, &c. Wherefore he prayed judgment if the said *William* ought to have or maintain his action aforesaid thereof against him, &c. and he prayed also a return of all and singular the goods and chattels aforesaid, together with his damages, costs and charges by him about his suit in that behalf expended, to be adjudged to him, &c. And the said *William* said, that the plea aforesaid by the said *John* above pleaded, and the matter in the same contained, were insufficient in law to preclude him the said *William* from having his action aforesaid against the said *John*, and that he to that plea in manner and form aforesaid pleaded had no necessity, nor was by the law of the land obliged in any manner to answer: and this he was ready to verify: wherefore for want of a sufficient answer in this behalf, he the same *William* prayed judgment and his damages, by reason of the caption and unjust detention of the goods and chattels aforesaid, to be adjudged to him, &c. And the said *John* said, that the plea aforesaid by him the said *John* in manner and form aforesaid above pleaded, and the matter in the same contained, were good and sufficient in law to preclude the said *William* from having his action aforesaid against him the said *John*; which said plea, and the matter in the same contained, he the same *John* was ready to verify and prove, as the court, &c. And because the said *William* did not answer to that plea, nor hitherto in any wise deny it, he the same *John* (as before) prayed judgment, and a return of all and singular the goods and chattels aforesaid, together with his damages, &c. to be adjudged to him, &c. And it was thereupon in such manner proceeded in our same court before us, that it was considered, that the plea aforesaid by him the said *John* above pleaded, and the matter in the same contained, were good and sufficient in law to preclude the

the said *William* from having his action aforesaid against him the said *John*: it was also considered, that the said *William P.* should take nothing by his writ aforesaid, but for his false claim should be in mercy, &c. and that the said *John* ought to recover his damages against the said *William* by reason of the caption and unjust detention of the goods and chattels aforesaid: therefore we command you, that by the oath of 12 good and lawful men of your bailiwick you diligently inquire what damages the same *John* hath sustained, as well by reason of the caption and unjust detention of the goods and chattels aforesaid, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which you shall thereof take send to us on wheresoever we shall then be in *England*, under your seal and the seals of those by whose oath you shall take that inquisition, together with our writ to you therefore directed. Witnesses *J. Holt*, knt. at *Westminster* 12th day of *February* in the second year of our reign.

G E O R G E, &c. To the sheriff of *Suffex*, greeting: where- as *William A.* was summoned to be in the court of the lady *Anne*, late queen of *Great Britain*, &c. before the late queen herself, to answer to *Matthew G.* in a plea, why the said *William* on the 9th day of *April* in the 12th year of the reign of the said lady the queen, at *Chalvington* in the county aforesaid, in a certain place there, called the *Croft*, took the cattle, to wit, 8 ewes and 6 lambs of him the said *Matthew*, and them unjustly detained, against surety and pledges, &c. And the same *William* in the same court before the said lady the late queen appearing, for a certain cause by him alledged said, that he took the cattle aforesaid at *Ripe*, otherwise *Cocklington* in the county aforesaid; without that, that he took the cattle aforesaid at *Chalvington* in the county aforesaid, as the said *Matthew* by his declaration aforesaid had above alledged: and this he was ready to verify: wherefore he pray'd judgment of the writ aforesaid, and that the said writ and declaration, &c. and to have a return of the cattle aforesaid; the same *William*, as bailiff of *Robert R.* well acknowledged the taking of the cattle aforesaid in the said place to be just, &c. because he said, that the same place, called the *Cony Earths*, contained in itself 5 acres of land with the appurtenances in the said parish of *Ripe*, otherwise *Cocklington* in the county aforesaid, of which said 5 acres of land with the appurtenances the same *Robert R.* before the said time when, &c. was seised in his demesne as of fee; and being so thereof seised, before the said time when, &c. to wit, on the 18th day of *March* in the 11th year of the reign of the said lady the late queen, at the parish of *Semiston* in the county aforesaid, the said *Robert R.* demised to one *Matthew G.* the younger the said 5 acres of land with the appurtenances, by the name of all those two pieces or parcels of pasture, called the *Cony Earths*, with the appurtenances lying and being in *Ripe*, otherwise *Cocklington* aforesaid;

to

An inquiry of the arrear of rent and value of the cattle distrained on a nonsuit in replevin.

3 Leon. 213.

[602]

Demise of the
queen.

Nonsuit.

Inquiry.
17 C. 2. c. 7.

to have and to hold the said 5 acres of land with the appurtenances whereof, &c. to the same *Matthew G.* from the feast of the annunciation of the blessed virgin *Mary* then next ensuing unto the end and term of one whole year, and so from year to year as long as both parties should please; yielding and paying therefore the yearly rent or sum of 50 s. of lawful money of *Great Britain*, at the two most usual feasts or terms in the year, to wit, on the feast of *St. Michael* the archangel and the annunciation of the blessed virgin *Mary*, by even and equal portions to be paid: by virtue of which demise the same *Matthew G.* the younger, afterwards and before the said time when, &c. to wit, on the 26th day of *March* in the year last abovesaid, into the said 5 acres of land with the appurtenances whereof, &c. entred, and was thereof possessed; and he the said *Matthew G.* the younger being so thereof possessed, and the said *Robert* of the reversion of the said 5 acres of land with the appurtenances being seised in his demesne as of fee; and because 50 s. of the rent abovesaid, for one year ended on the feast of the annunciation of the blessed virgin *Mary* in the 12th year of the reign of the said late queen, to the same *Robert* after that feast and at the said time when, &c. were in arrear and unpaid, the same *William*, as bailiff of the said *Robert*, well acknowledged the taking of the cattle abovesaid in the said place in which, &c. as in parcel of the tenements abovesaid with the appurtenances whereof, &c. to the same *Matthew G.* in form abovesaid demised, and justly, &c. for the said 50 s. rent to the said *Robert* in form abovesaid being in arrear, &c. And this he was ready to verify: wherefore he prayed judgment, and a return of the cattle abovesaid, together with his damages, costs and charges in this behalf expended, according to the form of the statute in such case made and provided, to be adjudged to him, &c. And afterwards the said lady the queen departed this life: and upon this the said *Matthew* prayed leave of our court before us until on the morrow of the holy *Trinity*, wheresoever, &c. to plead in bar to the cognisance abovesaid; and he had, &c. The same day was given to the said *William*, &c. On which day came the said *William* into our same court before us at *Westminster*; and the said *Matthew*, altho' solemnly called, did not come, nor farther prosecute his writ abovesaid: therefore it is considered, that the said *Matthew* take nothing by his writ abovesaid, but be in mercy for his false claim thereof, and that the said *William* do go thereof without day, &c. Therefore we command you, that according to the form of the statute in such case lately made and provided, by the oath of 12 good and lawful men of your county you diligently inquire how much of the yearly rent abovesaid at the said time of the taking and distraining of the goods and chattels abovesaid was in arrear and unpaid, and how much the goods and chattels abovesaid so as abovesaid taken and distrained were worth, according to the true value of the same; and the inquisition which, &c. send to us from the day of *St. Michael* in three weeks

weeks under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ. Witnesses *T. Parker, kn.*

The execution of this writ appears in a certain schedule to this inquisition annexed.

Suffex, **AN** inquisition indented taken at *Eastgrinstead* in the county aforesaid on the fifth day of *August, &c.* In witness whereof as well I the sheriff as the jurors aforesaid have to this inquisition set our seals the day, year and place above-said.

The return.

James Smith, bart. sheriff.

The rent in arrear 8 *l.*

The value of the goods 8 *l.*

For costs, according to the form of the statute, 9 *l.*

8 December 1715.

JAMES, &c. To the sheriff of *Gloucester*, greeting: whereas *John W.* gent. lately in our court before us at *Westminster*, by our writ impleaded *Francis C. esq;* *Henry C.* the elder, *George T. William B.* and *Henry C.* the younger, in a plea, why they took the cattle of him the said *John*, and them unjustly detained, against surety and pledges, &c. And thereupon the same *John* by *Thomas E.* his attorney complained, that the said *Francis*, *Henry C.* the elder, *George*, *William*, and *Henry C.* the younger, on the first day of *September* in the 36th year of the reign of the lord *Charles* the Second, late king of *England*, &c. at the parish of *St. Philip* and *James* in your county aforesaid, in a certain place there called *Conham*, took the cattle, to wit, fifty sheep of him the said *John*, and them unjustly detained, against surety and pledges, until, &c. whereby he then said that he was prejudiced, and had damage to the value of 20 *l.* And therefore he then produced the suit, &c. And thereupon the said *Francis*, *Henry*, *George*, *William* and *Henry*, by *C. H.* their attorney came and defended the force and injury when, &c. And the said *Francis* in his own right well avowed, and as bailiff of *Thomas S.* and *Stephen C.* gent. well acknowledged, and the said *Henry*, *George*, *William* and *Henry*, as bailiffs of the said *Francis*, *Thomas* and *Stephen*, well acknowledged the taking of the cattle aforesaid, in the said place in which, &c. and justly, &c. because they said that long before the said time when, &c. the lord *Charles* the Second, late king of *England*, &c. was seised of and in the forest or chase called *Kingswood*, with the appurtenances in your county aforesaid, in his demesne as of fee in the right of his crown of *England*; and that the said place in which, &c. is and at the said time when, &c. and also for time immemorial was within the forest aforesaid, and parcel of the same forest, and that the same late king being so seised before the said time

An inquiry of damages in replevin after judgment on demurrer.

Avowry and cognisance.

[603]

time when, &c. by indenture made at *Westminster* in the county of *Middlesex*, on the 20th day of *January* in the 21st year of the reign of the same late king, between the same late king of the one part and *one Baynham T. knt. and bart.* of the other part, which said indenture sealed under the great seal of *England*, the same *Francis, Henry, George, William and Henry* then in court produced, the date whereof is the day and year last abovesaid, the same late king *Charles the Second*, for the considerations in the same indenture mentioned, with the advice of two of the commissioners of the treasury of the same late king, granted, demised and to farm let to the said *Baynham* the forest or chase aforesaid, with the appurtenances, by the name of all that forest or chase called *Kingswood*, lying and being in or near the parish of *St. Philip and James* in the city of *Bristol* in the parish of *Bitten Mangetfield*, otherwise *Mangerfield*, *Stapleton*, otherwise *Stableton*, *Hambrooke* and *Westanham* in your county, containing by estimation 3432 acres of waste land, more or less, and extending on sundry other lands, as well waste as inclosed, in or near the parishes aforesaid, or some of them, together with all bucks, does and other beasts then being within the limits of the forest or chase aforesaid, and all liberties, franchises, privileges, rights and appurtenances to the same forest or chase belonging, incident or appendant, or within the forest or chase then before had, used or enjoyed in the times of the lady *Elizabeth*, late queen of *England*, or of the lord *James*, late king of *England*, and the lord *Charles the First*, late king of *England*, or any of them, by reason or pretence of the said forest or chase, or the liberties and franchises of the same, to have and to hold the said forest, chase, franchises, liberties, privileges, and all and singular other the premises in the same indenture mentioned and intended to be thereby granted, with their and every of their appurtenances to the said *B. T.* his executors, administrators and assigns, from the feast of *St. Michael* the archangel then last past, for and during the term of 60 years from thence next ensuing, fully to be compleat and ended: and the said late king *Charles the Second* willed, and by the same indenture for himself, his heirs and successors, gave and granted to the said *Baynham*, his executors, administrators and assigns, full power and authority to replenish the forest or chase aforesaid with deer, and by all lawful ways and means to erect lodges for the keepers, and to hinder and suppress purprestures, assarts and nufances there, of what nature or kind soever, and also to preserve the covert and vert for the safety and preservation of the beasts aforesaid, as by the indenture aforesaid, among other things is more fully manifest, by virtue of which said demise the said *Baynham* into the forest or chase aforesaid, with the appurtenances entered, and was thereof possessed, and being so thereof possessed, the same *Baynham* afterwards, and before the said time when, &c. to wit, on the first day of *March* in the 32d year of the reign of the said lord king *Charles the Second*, at the parish of *St. Philip and James*

James aforesaid, assigned to one *Mary B.* the premises aforesaid, with the appurtenances, and all his right, title and interest of and in the same, to have and to hold to the same *Mary*, her executors and assigns during all the residue of the said term of 60 years then to come and unexpired, by virtue of which said assignment the same *Mary* into the premises aforesaid entred and was thereof possessed; and being so thereof possessed, the said *Mary* afterwards and before the said time when, &c. to wit, on the third day of *January* in the 33d year of the reign of the said lord king *Charles* the Second, at the parish of *St. Philip* and *James* aforesaid, assigned to the said *Francis*, *Thomas* and *Stephen* the premises aforesaid, with the appurtenances, and all her right, title and interest of and in the same, to have and to hold to the same *Francis*, *Thomas* and *Stephen* during all the residue of the said term of 60 years then to come and unexpired, by virtue of which said assignment the same *Francis*, *Thomas* and *Stephen* into the premises aforesaid, with the appurtenances entred, and were and yet are thereof possessed; and because the cattle aforesaid at the said time when, &c. were in the said place in which, &c. eating up the grafs there growing, and doing damage there, the said *Francis* in his own right well avowed, and as bailiff of the said *Thomas* and *Stephen* acknowledged, and the said *Henry*, *George*, *William* and *Henry*, as bailiffs of the said *Francis*, *Thomas* and *Stephen* well acknowledged the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. so doing damage there: and this they were ready to verify: wherefore they prayed judgment and a return of the cattle aforesaid, together with their damages, costs and charges in that behalf expended, according to the form of the statute in such case made and provided, to be adjudged to them, &c. And the said *John W.* thereto said, that the said *Francis*, *Henry*, *George*, *William* and *Henry*, for the reason before alledged, ought not as bailiffs of the said *Thomas S.* and *Stephen C.* to acknowledge, nor the said *Francis* in his own right to avow the taking of the cattle aforesaid in the said place in which, &c. just, because by protesting that the said lord king *Charles* the Second never was seised of the soil or land of the forest or chase of *Kingswood* aforesaid, for plea the same *John W.* said, that long before the said time of the taking of the cattle aforesaid made, and also before the said time when it is supposed that the said late king *Charles* the Second was seised of the forest or chase aforesaid, to wit, on the third day of *April* in the 23d year of the reign of the late king *Charles* the First, *John W.* the elder, father of him the said *John W.* was seised of the manor of *St. Lawrence* within the parish of *St. Philip* and *James*, with the appurtenances in your county aforesaid, whereof the said place in which, &c. is and at the said time when, &c. and also for time immemorial was parcel in his demesne as of fee; and being so thereof seised, the same *John W.* the elder afterwards and before the said time when, &c. at *Conham* aforesaid died of such his estate thereof seised, after whose death the said

[604]

Plea,

Demurrer.

The causes.
27 El. c. 5.
4 Ann. c. 16.

Joinder in demurrer.

saïd manor with the appurtenances, whereof the saïd place in which, &c. is parcel, descended to the saïd *John* as son and heir of him the saïd *John*, by reason whereof the saïd *John* the son afterwards and before the saïd time when, &c. into the saïd manor with the appurtenances entred, and at the time of the taking of the cattle aforesaid was and yet is seised thereof in his demesne as of fee, and being so thereof seised, the same *John* before the saïd time when, &c. put his cattle aforesaid into the saïd place in which, &c. to feed on the grasse there then growing, until the saïd *Francis*, *Henry*, *George*, *William* and *Henry* on the day and year in the declaration aforesaid specified at *Conham* aforesaid, took the cattle aforesaid of him the saïd *John*, and unjustly detained them against surety and pledges, until, &c. as he above against them complained: and this he was ready to verify: wherefore he prayed judgment and his damages, by reason of the caption and unjust detention of those cattle, to be adjudged to him, &c. And the saïd *Francis*, *Henry*, *George*, *William* and *Henry* thereupon saïd, that the saïd plea of the saïd *John* above in bar of the avowry and cognisance aforesaid pleaded, was insufficient in law to maintain him the saïd *John* to have his action aforesaid against them the saïd *Francis*, *Henry*, *George*, *William* and *Henry*, and that they to that plea in manner and form aforesaid pleaded had no necessity, nor were by the law of the land obliged in any manner to answer: and this they were ready to verify: wherefore for want of a sufficient plea in this behalf they prayed judgment, and a return of the cattle aforesaid, together with their damages in this behalf sustained, to be adjudged to them, &c. And for cause of demurrer in law in this behalf, the same *Francis*, *Henry*, *George*, *William* and *Henry* did set down, and to the court here expresse the causes following, to wit, that the saïd *John* in his plea aforesaid did not traverse the matter in the avowry and cognisance aforesaid, when he ought to traverse that matter, as they saïd; and because the matter of that plea was not issuable nor triable, and because that plea was insufficient and wanted form, and thereupon the saïd *John W.* saïd that the plea aforesaid by him the saïd *John* above, in bar to the avowry and cognisance aforesaid pleaded, and the matter in the same contained were good and sufficient in law to preclude the saïd *Francis*, *Henry*, *George*, *William* and *Henry* from having their avowry and cognisance aforesaid; which saïd plea, and the matter in the same contained the same *John* was ready to verify and prove, as the court, &c. And because the saïd *Francis*, *Henry*, *George*, *William* and *Henry* to that plea did not answer, notwithstanding in any wise deny it, the same *John* as before prayed judgment and his damages aforesaid, by reason of the caption and unjust detention of the cattle aforesaid, to be adjudged to him, &c. and because the court of the saïd lord the king here were not advised to give their judgment of and upon the premises, day therefore was given to the parties aforesaid before the saïd lord the king from the day of *Easter* in 15 days, wheresoever, &c. to hear

hear their judgment of and upon the premisses, because the court of the said lord the king thereof, &c. on which day, before the lord the king at *Westminster* came the parties aforesaid, by their attornies aforesaid, whereupon all and singular the premisses being seen, and by the court of the said lord the king fully understood; and mature deliberation being thereon had, it was considered that the plea aforesaid by him the said *John* above in bar to the avowry and cognisance aforesaid pleaded, was good and sufficient in law to maintain him the said *John* to have his action aforesaid against them the said *Francis, Henry, George, William* and *Henry*: wherefore it was also considered, that the said *John* ought to recover his damages against them the said *Francis, Henry, George, William* and *Henry*, by reason of the caption and unjust detention of the cattle aforesaid; but because it is not known what damages the said *John* hath sustained by the reason aforesaid; therefore we command you, that by the oath of 12 good and lawful men of your bailiwick you diligently inquire what damages the same *John* hath sustained, as well by reason of the premisses as for his costs and damages by him about his suit in this behalf expended; and the inquisition which you shall thereupon take, send to us wheresoever, &c. under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness *Edmund Herbert*, knt. at *Westminster*, the 17th day of *May* in the second year of our reign.

Judgment for the plaintiff.

Inquiry.

ANNE, &c. To the sheriff of *Middlesex*, greeting: whereas *Robert S.* lately in our court before us at *Westminster*, to wit, in *Michaelmas* term in the first year of our reign, by bill, without our writ impleaded *John H.* being then in the custody of the marshal of our *Marshalsea* before us, for this, to wit, that whereas the said *John* and *Robert* on the 12th day of *April* in the year of our Lord 1702, at *Westminster* in your county, accounted together (*so on the declaration to*) altogether refused, and then did refuse, to the damage of him the said *Robert* 40 *l.* as he said, and it was in such manner proceeded in our same court before us at *Westminster*, that it was considered that the said *Robert* ought to recover his damages by reason of the non-performance of the several promises and assumptions aforesaid; but because it was not then known to our court before us what damages the same *Robert* had sustained by reason of the premisses, we commanded your predecessor, that by the oath of 12 good and lawful men of your bailiwick, he should diligently inquire what damages the said *Robert* had sustained, as well by reason of the non-performance of the several promises and assumptions aforesaid, as for his costs and charges by him about his suit in that behalf expended, and the inquisition which he should thereon make should send to us at *Westminster* on *Wednesday* next after 15 days of *Easter* then following under his seal, and the seals of those by whose oath he should take that inquisition, together with that writ; and

[605]

Writ of inquiry after a scire facias against an administratrix, where the defendant died before the return of the first writ of inquiry.

the same day was given to the said *Robert* before us at *Westminster* aforesaid, as by the record and proceedings thereof in our said court before us at *Westminster* manifestly appears: and whereas on the behalf of the said *Robert S.* it was shewn to us, that before the said *Wednesday* next after 15 days of *Easter* the said *John H.* died intestate, and the inquisition of the damages aforesaid yet remains to be executed; and that one *Mary H.* widow and relict of him the said *John*, was administratrix of all and singular the goods and chattels, right and credits which belonged to the said *John H.* her late husband, deceas'd, as we by the suggestion of the said *Robert S.* understood: and because we were willing that those things which had been lawfully transacted in our same court before us should be carried into due execution, we commanded you that by good and lawful men of your bailiwick you should give notice to the said *Mary* that she should be before us at *Westminster* on *Saturday* next after the morrow of *All Souls*, to shew if she had or could say any thing for herself why the damages aforesaid in the action aforesaid ought not to be assessed, and by the said *Robert* recovered, according to the form and effect of the statute in such case lately made and provided, if she should think fit; and further, to do and receive what our said court before us should then and there consider concerning her in that behalf: and that you should have there then the names of those by whom you should give her notice, and that writ. On which day before us at *Westminster* came the said *Robert S.* by *N. S.* his attorney: and you our sheriff of *Middlesex* returned, that by *Robert N.* and *John S.* good and lawful men of your bailiwick you had given notice to the said *Mary* that she should be before us on the day and place in the writ aforesaid contained, to shew, &c. according to the tenor of the writ aforesaid; which said *Mary* so warned, being on the same day solemnly called, by *John B.* her attorney likewise came: whereupon the said *Robert* prayed that the damages aforesaid in the action aforesaid might be assessed, and by him the said *Robert* recovered: and because the said *Mary* then said nothing, nor shewed nor alledged any matter to arrest the final judgment in the action aforesaid, or why the damages in that behalf should not be assessed: therefore on the petition of the said *Robert* we command you, that by good and lawful men of your bailiwick you diligently inquire what damages the same *Robert* hath sustained, as well by reason of the premisses as for his costs and charges by him about his suit in that behalf expended; and the inquisition which you shall thereof take send to us at *Westminster* on *Friday* next after the morrow of the holy *Trinity*, under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ. Witnesses *J. Holt*, knt. at *Westminster* the 30th day of *May* in the third year of our reign.

8 & 9 W. 3.
c. 10.

G E
w
William
were at
ster, to
preserve
and det
as well

ANNE, &c. To the ſheriff of *Stafford*, greeting: *An habere facias poſſeſſionem, and a writ of inquiry on a judgment in ejectment.*
 whereas *Jofias S.* lately in our court before us at *Westminster* by our writ, and by the judgment of the ſame court, recovered againſt *Iſaac W.* late of *Longden* in your county, yeoman, his term yet to come of and in two barns, 60 acres of land, 50 acres of arable land, 30 acres of meadow, and 20 acres of paſture, with the appurtenances in *Longden*, which *Frances C.* widow, on the ſecond day of *November* in the 13th year of the reign of the lord *William* the Third, our moſt dear brother, late king of *England*, &c. to the ſame *Jofias S.* demifed for a term which is not yet paſt, to wit, from the 30th day of *October* then laſt paſt, unto the end and term of five years from thence next enſuing and fully to be compleat and ended, by virtue of which ſaid demife the ſame *Jofias S.* into the tenements aforeſaid entred, and was thereof poſſeſſed, until the ſaid *Iſaac* afterwards (to wit) on the ſaid ſecond day of *November* in the 13th year aforeſaid with force and arms, &c. into the tenements aforeſaid, with the appurtenances, in and upon the poſſeſſion of him the ſaid *Jofias* thereof entred, and him from his farm aforeſaid, his term aforeſaid therein not yet ended, ejected, expelled and amoved: therefore we command you that you cauſe the ſaid *Jofias S.* to have his poſſeſſion aforeſaid of his term aforeſaid yet to come of and in the tenements aforeſaid, with the appurtenances, and how you ſhall execute this our writ certify to us on the morrow of the holy *Trinity*, whereſoever we ſhall then be in *England*; and the ſaid *Jofias S.* ought to recover his damages by reaſon of the treſpaſs and ejectment aforeſaid; but becauſe our court before us do not know what damages the ſaid *Jofias S.* hath ſuſtained on the account aforeſaid; we alſo command you that by the oath of 12 good and lawful men of your bailiwick, you diligently inquire what damages the ſaid *Jofias* hath ſuſtained, as well by reaſon of the premiſſes aforeſaid, as for his coſts and charges by him about his ſuit in this behalf expended; and the inquisition which you ſhall thereof make, certify likewise to us on the ſame day, whereſoever we ſhall then be in *England* under your ſeal, and the ſeals of thoſe by whoſe oath you ſhall make that inquisition; and have then the names of the jurors and this writ. Witneſs *J. Holt*, knt. at *Westminster* the 15th day of *May* in the third year of our reign.

GEORGE, &c. To the ſheriff of *Middlesex*, greeting: *An inquiry in an action qui tam.*
 whereas *Humphrey H.* late of *London*, doctor of laws, and *William Savage*, late of *London* aforeſaid, profeſſor of divinity, were attached to be in our court before our juſtices at *Westminster*, to answer to *Edward B.* bart. one of our juſtices aſſigned to preſerve our peace in and for the county of *Kent*, and alſo to hear and determine divers felonies in the ſame county committed, who as well for us as for himſelf in this behalf proſecuted in a plea, that

that whereas, &c. and had damages to the value of 20*l.* as it is said; and it is in such manner proceeded in our same court that the said *Edward B.* ought to recover his damages by reason of the premises aforesaid, against the said *Humphrey and William*; but because it is not known what damages the said *Edward* hath sustained by reason of the premises, we command you, that by the oath of 12 good and lawful men of your bailiwick you diligently inquire what damages the same *Edward* hath sustained, as well by reason of the premises aforesaid as for his costs and charges by him about his suit in this behalf expended; and the inquisition which you shall thereof make certify to our justices at *Westminster* from the day under your seal, and the seals of those by whose oath you shall take that inquisition, and have there the names of those by whose oath you shall take that inquisition and this writ. Witness *P. King*, knt. at *Westminster* the 12th day of *July* in the 6th year of our reign.

Cooke.

A writ of inquiry of the value of lands descended to an heir.

[607]

ANNE, &c. To the sheriff of *Lincoln*, greeting: where- as *Elizabeth F.* widow, our debtor, in our court before the barons of our exchequer at *Westminster*, lately, to wit, in this same term, by the consideration of the same court, hath recovered against *John W.* the son and heir of *John W.* late of *London*, furrier, otherwise called *J. W.* of the city of *London*, furrier, as well a certain debt of 800*l.* as 56*s.* 8*d.* which to the same *Elizabeth* in our same court were adjudged for her damages, which she had by reason of the detention of that debt whereof he is convicted, of one messuage, three cottages, and three acres of meadow in *B. F.* and *S.* in your county, which were the lands and tenements of the said *J. W.* the father at the time of his death in fee-simple, execution nevertheless of the judgment aforesaid yet remains to be made: and therefore we command you, that by the oath of good and lawful men of your county you diligently inquire how much those tenements with the appurtenances are worth by the year in all issues, besides reprises; and by that inquisition the same tenements with the appurtenances to the same *E.* without delay, according to the true value of the same, deliver, to hold the same *E.* until she shall thereout levy the debt and damages aforesaid; and how you shall execute this our command certify to the barons of our exchequer at *Westminster* from the day of *Easter* in 15 days next following under your seal and the seals of those by whose oath you shall make that inquisition; and have there the names of those by whose oath you shall make that inquisition, and this writ. Witness, &c.

Judgment of lands descended.

And upon this the said *E. F.* prays judgment for her debt aforesaid against the said *J. W.* on the said tenements with the appurtenances in *B. F.* and *S.* in the county of *Lincoln* to be levied: therefore it is considered by the barons here, that the said

faid *E.* do recover against the faid *J. W.* her debt aforesaid, and her damages by reason of the detention of that debt, to 56 s. 8d. to the same *E.* by the court here with her assent adjudged; and the faid *J. W.* in mercy: and because it is not known how much the tenements aforesaid are worth by the year in all issues, besides reprises, therefore the sheriff of *Lincoln* aforesaid is commanded that by the oath of good and lawful men of his bailiwick he diligently inquire how much the same tenements with the appurtenances in his county are worth by the year in all issues, besides reprises; and by that inquisition by the sheriff so made, the same tenements with the appurtenances, according to the true value of the same, to the same *E.* without delay deliver, to hold to the same *E.* until she shall levy the debt and damages aforesaid out of the faid tenements with the appurtenances; and how, &c. let the same sheriff certify here from the day next following under his seal and the seals, &c. The same day is given to the parties aforesaid here, &c.

ANNE, &c. To the sheriffs of *London*, greeting: where- as *R. R.* lately in the court of the lord *William* the Third, late king of *England*, &c. before *E. N.* knt. *J. P.* and *J. B.* knt. then the justices of the faid late king of the bench at *Westminster*, from the day of *Easter* in fifteen days in *Easter* term in the thirteenth year of the reign of the faid late king, by the writ of the faid late king, and by the judgment of the faid court, recovered against *Henry J.* late of, &c. *J. B.* late of, &c. and *R. W.* late of, &c. his term yet to come of and in three messuages, three cottages, 10 acres of land, 10 acres of meadow, and 20 acres of pasture with the appurtenances in *B.* which *J. R.* and *Rebecca* his wife, and *S. C.* and *Margaret* his wife, on the 4th day of *March* in the 12th year of the reign of the faid late king, at *B.* aforesaid, to the same *R.* had demised; to have and to hold the tenements aforesaid with the appurtenances to the same *R.* and his assigns from the 27th day of *February* then last past unto the full end and term of three years from thence next ensuing and fully to be compleat and ended, whereof the same *H. J.* and *R.* are convicted, as by the inspection of the record and proceedings thereof, which the faid late king by virtue of the writ of error of the faid late king by the faid *H. J.* and *R.* of and upon the premisses prosecuted for certain causes of error lately caused to be brought into our court before us appears to us on record: and whereas also afterwards, to wit, from the day of *Easter* in three weeks in this same *Easter* term in the first year of our reign, because the faid *H. J.* and *R.* did not prosecute their writ of error in our court before us, it was considered, that the faid *R.* should have his execution of the judgment aforesaid, as it likewise appears to us on record; and the faid *Richard*, according to the form of the statute thereof lately made and provided, ought to recover his damages for

An inquiry for the mesne profits on affirmation of a judgment in ejectment.

[608]

the mesne profits of the tenements aforesaid with the appurtenances, and for waste in the same committed after the rendition of the judgment aforesaid: but because our court before us do not know to how much the issues and profits of the tenements aforesaid with the appurtenances from the said day of the rendition of the judgment aforesaid, to wit, from the day of *Easter* in 15 days in *Easter* term in the 13th year of the reign of the said late king until the said three weeks of *Easter* in this present *Easter* term in the first year of our reign aforesaid do amount, and what damages the said *R.* hath sustained by reason of any waste in the same tenements with the appurtenances after the said day of the rendition of that judgment until the said three weeks of *Easter* committed, we command you, that by good and lawful men of your bailiwick you diligently inquire to how much the issues and profits of the tenements aforesaid with the appurtenances from the said day of the rendition of the judgment aforesaid until the same three weeks of *Easter* do amount, and also what damages the same *R.* hath sustained by reason of any waste in the same tenements with the appurtenances from the said day of the rendition of the judgment aforesaid until the said three weeks of *Easter* committed: and the inquisition which you shall thereof take send to us on the octave of the holy *Trinity*, wheresoever we shall then be in *England*, under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness *J. Holt*, knt. at *Westminster* 18th day of *May*, in the first year of our reign.

Holt. Coleman.

An inquiry of damages in trespass, where the defendant pleads not guilty to part, and justifies as to the residue; and judgment for the plaintiff on demurrer.

WILLIAM, &c. To the sheriff of *N.* greeting: whereas *W. L.* in our court before us at *Westminster*, by bill, without our writ impleaded *W. S.* and *F. A.* being in the custody of the marshal of our *Marshalsea* before us, for this, that they on the 20th day of *M.* in the third year of our reign, with force and arms, &c. on him the said plaintiff, at *D.* in the county aforesaid, did make an assault, and him the said plaintiff did then and there beat, wound, abuse, take and imprison, and him in prison there a long time, to wit, for the space of 20 hours then next following, without any reasonable and lawful cause, and against the law and custom of this kingdom of *England*, and until the same plaintiff paid a fine of 5*s.* 6*d.* to the same defendants to have his delivery from thence, did detain; and other outrages on him then and there did commit, against our peace, and to the damage of him the said plaintiff 40*l.* as he said: and therefore he then produced the suit, &c. And it is in such manner proceeded in our same court before us, that the said plaintiff ought to recover his damages against the said defendant by reason of the trespass, assault, imprisonment, and the detention of the said plaintiff for the space of half an hour until the said plaintiff paid 5*s.* 6*d.* to the said defendants: but because

because our court before us do not know what damages the said plaintiff hath sustained by reason thereof, therefore we command you, that by good and lawful men of your bailiwick you diligently inquire what damages the said plaintiff hath sustained, as well by reason of the trespass and assault aforesaid, and the detention of the said plaintiff for the space of half an hour until the said plaintiff paid 5*s.* 6*d.* to the same defendants, as for his costs and charges by him about his suit in this behalf expended; and the inquisition, &c.

WILLIAM, &c. To the sheriff of O. greeting :
 whereas *A. B.* lately in our court, to wit, in *Michaelmas* term last past before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, recovered against *C. D.* otherwise called, &c. 100*l.* debt, and also 53*s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as it appears to us on record : and whereas that judgment in form aforesaid obtained was had and obtained on a certain writing obligatory in the penal sum of the said 100*l.* debt, conditioned for the performance of certain covenants and agreements mentioned and contained in a certain indenture bearing date, &c. made between him the said *A. B.* by the name of, &c. on the one part, and the said *C. D.* by the name of, &c. on the other part, by and on the part of him the said *C. D.* to be done and performed; and the same *A. B.* according to the form of the statute in such case lately made and provided, with an intent to recover his damages by reason of his the said *C. D.*'s breach and non-performance of the covenants in the same indenture contained, on the part of him the said *C. D.* to be performed, hath assigned on the roll of the said judgment for breach of those covenants that, &c. Therefore, according to the form of that statute, we command you, that you cause to come before our justices assigned to take assises in your county on to wit, the day of 12 free and lawful men of your bailiwick, to inquire diligently on their oath of the truth of the premises, and to assess what damages the same *A. B.* hath sustained as well by reason of his the said *C. D.*'s non-performance of the several covenants aforesaid, as for his costs and charges by him in this behalf expended : we likewise command our said justices of assise, that they certify the inquisition before them taken to us at *Westminster* aforesaid on together with the names of those by whose oath that inquisition shall be taken; and have there this writ. Witness, &c.

An inquiry on the 8 & 9 W. 3. c. 10. to prevent frivolous and vexatious suits.

An inquiry on
the S. 9 W. 3.
c. 10.

WILLIAM, &c. To the sheriff of *Cambridge*, greeting : whereas *Samuel W.* late of *Cambridge* in your county, stationer, otherwise called, &c. was summoned to be in our court before our justices at *Westminster* to answer to *Joseph B. S. T. P.* master or warden of the college or house commonly called *Peterhouse* in the university of *Cambridge*, and the fellows and scholars of the bishop of *Ely* of the same college, in a plea of debt 100*l.* which the same master, fellows and scholars demanded of the same *Samuel* on a certain writing obligatory, with a condition to be void on the performance of the several articles, covenants and agreements of a certain indenture in such condition mentioned on the part of the said *S. W.* to be performed : and thereupon it was in such manner proceeded in our same court of the bench that the said master or warden, and fellows and scholars should recover against the said *S.* their debt aforesaid, and their damages, by reason of the detention of that debt, to 50*s.* and that the said *Samuel* should be in mercy, &c. And because the said master or warden, and fellows and scholars aforesaid, in replying in our same court in the plea aforesaid said, that the said *S.* his covenants between them made, according to the form and effect of the said indenture between the said master or warden, and fellows and scholars aforesaid, by the name of the Rev. *J. B. S. T. P.* master or warden of the college or house, commonly called *Peterhouse* in the university of *Cambridge*, and the fellows and scholars of the bishop of *Ely* of the same college on the one part, and the said *S.* by the name of *S. W.* of *Cambridge* in the county of *Cambridge*, stationer, on the other part made, had not kept but had broke ; for that on the first day of *August* in the 8th year of our reign, a certain orchard or garden-plot in the indenture aforesaid mentioned, was not stored, set and planted with good fruit trees ; and that on the said first day of *August* in the 8th year aforesaid, a certain tenement in the indenture aforesaid likewise mentioned was ruinous and in decay for want of repairing the walls, ceiling, partitions, floors, ground-felling and tiling of the same, whereby the timber thereto belonging, by reason of the rain thereon falling became decayed and rotten ; and also that the said *S.* the said orchard or garden-plot so not stored, set and planted with good fruit trees permitted to remain, and to the same master or warden, and fellows and scholars aforesaid at the end of the said term left ; and likewise that the said *S.* the said tenement so as aforesaid ruinous and in decay for want of repairing the walls, ceiling, partitions, floors, ground-felling and tiling of the same, and the said timber so as aforesaid ruinous, decayed and rotten permitted to remain ; and to the same master or warden, and fellows and scholars aforesaid at the end of the said term also left, against the form and effect of the indenture aforesaid : therefore we command you that, according to the form of the statute in such case lately made and provided, you cause to come before

before our justices assigned to take assises in your county on *Thursday*, to wit, the 11th day of *August* at the castle of *Cambridge* in your county, 12 free and lawful men of your bailiwick to inquire of the truth of the premisses in the replication of them the said master or warden, and fellows and scholars aforesaid mentioned, and to assess what damages the said *Joseph* and the fellows and scholars aforesaid have sustained by reason of the breach of the several covenants aforesaid; and that you have on that day before the said justices this writ: we likewise command our said justices of assise that they certify the inquisition before them taken, to our justices of the bench at *Westminster*, from the day of *St. Michael* in three weeks, together with this writ. Witness, &c.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: whereas *E. P.* widow, executrix of the last will and testament of *M. P.* her late husband, deceased, lately also one of the clerks of *W. T.* esq; one of the prothonotaries of our court of the bench lately in our court before us at *Westminster*, to wit, in *Trinity* term last past, impleaded *R. D.* then being in the custody of the marshal of our *Marshalsea*, before us for this, to wit, (*to the end of the declaration*) and therefore she then produced the suit, &c. And the same *Elizabeth* produced then in court the letters testamentary of the said *M.* aforesaid, whereby it sufficiently appeared to our court that the said *Elizabeth* was executrix of that will, and thereof had the administration, &c. and it was in such manner proceeded in our same court before us, that it was considered by the court aforesaid, that the said *Elizabeth* ought to recover her damages which she had sustained by reason of the premisses against the said *R.* and because it was not known what damages the said *E.* had sustained by reason of the premisses, the sheriff was commanded that by the oath of 12 good and lawful men of his county he should diligently inquire what damages the said *E.* had sustained, as well by reason of the premisses as for her costs and charges by her about her suit in that behalf expended; and the inquisition which he should thereof take he should certify before us at *Westminster*, on *Monday* next after three weeks of *St. Michael*, under his seal, and the seals of those by whose oath he should take that inquisition, and the same day was given to the said *E.* before us at *Westminster* as by the record and proceedings thereof in our said court before us remaining manifestly appears; the inquisition nevertheless of the damages aforesaid yet remains to be made; and the said *E.* is dead, as by the suggestion of *R. B.* widow, administratrix of all and singular the goods and chattels, rights and credits which belonged to the said *M.* at the time of his death by the same *E.* unadminister'd, we have in our court before us understood: and whereon at the prosecution of the said *R.* in our court before us, by our writ of *scire facias* issuing out of that court, you was lately commanded, that by good
and

An inquiry in case where the plaintiff died after judgment by default, and before the damages were assessed.

[610]

8 & 9 W. 3.
c. 10.

and lawful men of your bailiwick you should give notice to the said *R. D.* that he should be before us at *Westminster* on *Friday* the morrow of *All Souls* to shew if he had or could say any thing for himself why the said *R.* ought not to recover her damages by reason of the premisses against the said *R. D.* according to the form and effect of the statute in such case lately made and provided, if he should think fit; on which *Friday* the morrow of *All Souls* before us at *Westminster* came the said *R.* in her proper person; and you the said sheriff on that day returned to us, that by *T. S.* and *J. S.* good and lawful men of your bailiwick you had given notice to the said *R.* that he should be before us on the day and place aforesaid, to shew in form aforesaid, if he thought fit, as by the writ aforesaid you was commanded, which said *R.* so warned on the same day being solemnly called, did not come, but made default: wherefore in our same court before us it is considered, that the said *R.* ought to recover her damages by reason of the premisses against the said *R. D.* but because it is not known what damages the said *R.* hath sustained by reason of the premisses aforesaid: therefore we command you, that by the oath of 12 good and lawful men of your bailiwick you diligently inquire what damages the said *R.* hath sustained, as well by reason of the premisses aforesaid as for her costs and charges by her about her suit in this behalf expended; and the inquisition which you shall thereof take, certify to us at *Westminster* on day next after under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness, &c.

On a nonsuit in replevin to inquire how much rent was due, and the value of the goods distrained.

17 C. 2. c. 7.

WHereupon the said *Samuel R.* being solemnly called, doth not come, nor further prosecute his writ aforesaid; therefore it is considered that the said *Samuel* do take nothing by his writ aforesaid but be in mercy for his false plaint thereof; and that the said *James P.* may go thereof without day, &c. And upon this the said *James*, according to the form of the statute in such case lately made and provided, prays the writ of the lady the now queen to be directed to the sheriff of the county aforesaid to inquire of the arrears of the rent aforesaid, and of the value of the goods and chattels aforesaid above specified, and to him it is granted; therefore the sheriff of the county aforesaid is commanded, that, according to the form of the statute aforesaid, by the oath of 12 good and lawful men of his county he diligently inquire how much of the yearly rent aforesaid, at the said time of the taking and distraining of the goods and chattels aforesaid was in arrear and unpaid, and how much the goods and chattels aforesaid, so as aforesaid taken and distrained, were worth, according to the true value of the same; and the inquisition which, &c. let the sheriff certify here from the day of *St. Michael* in three weeks, wheresoever, &c. under his seal, and the seals, &c. on which day here comes the said *James P.* by his attorney aforesaid: and the sheriff, to wit, *A. B.* esq; now returns

returns here a certain inquisition taken before him at
in the county aforesaid on day the last past,
by the oath of 12 good and lawful men, whereby it is found,
that at the time of the taking and distress of the goods and chat-
tels aforesaid, to wit, on the day of in the
year the yearly rent aforesaid, in the avowry aforesaid
mentioned to be due to the same *James*, was in arrear and un-
paid, and that the goods and chattels aforesaid were worth, ac-
cording to the true value of the same 100*l.* Therefore it is
considered that the said *James* do recover against the said *Samuel*
the said 100*l.* of the rent aforesaid, being by the inquisition
aforesaid, in form aforesaid found, and his damages by reason
of the premisses to by the court of the lady the queen
now here to the same *James* at his request for his costs and
charges by him about his suit in this behalf expended, according
to the form of the statute thereof lately made and provided ad-
judged, which said value, costs and charges aforesaid, amount
in the whole, &c.

ANNE, &c. To the sheriffs of *London*, greeting: where-
as *Richard D.* late of *London* in your county, merchant,
was attached to be in our court before us to answer to *J. B.* and
G. C. in a plea why whereas the said *Richard* on the 30th day of
April in the 10th year of our reign at *London* aforesaid, in the
parish of *St. Mary le Bow* in the ward of *Cheap*, was indebted
to the same *John* and *G.* in 400*l.* of lawful money of *Great*
Britain, for so much money by them the same *John* and *G.* for
the said *Richard*, and at the special instance and request of him
the said *Richard* before then expended, laid out and paid (and
so on the declaration to) hath altogether refused, and yet doth re-
fuse, to the damage of them the said *John* and *George* 400*l.* as
it is said; and it is in such manner proceeded in our same
court before us, that it is considered by the same court that
the said *J.* and *G.* ought to recover their damages by reason of
the premisses against the said *Richard*; but because our court
before us do not know what damages the said *John* and *George*
have sustained by reason of the premisses aforesaid: therefore
we command you, that by the oath of 12 good and lawful men
of your bailiwick you diligently inquire what damages the said
John and *George* have sustained, as well by reason of the pre-
misses as for their costs and charges by them about their suit in
this behalf expended; and the inquisition which you shall there-
of take send to us, from the day of *St. Martin* in 15 days,
wheresoever we shall then be in *England*, under your seals, and
the seals of those by whose oath you shall take that inquisition,
together with this writ. Witness *Thomas Parker*, knt. at *West-*
minster, the 23d day of *October* in the 10th year of our reign.

[611]

A writ of
inquiry where
the action was
brought by
original.

Latitat.

The form of a
latitat.

Acetiam.

See bill of
Middlesex, for
the several
forms of the
acetiam.

WILLIAM, &c. To the sheriff of *Sussex*, greeting:
whereas we lately commanded our sheriff of *Middlesex*
that he should take *J. C.* and *R. R.* if they should be found in
his bailiwick, and them safely keep, so that he might have their
bodies before us at *Westminster* on a certain day now past, to an-
swer to *W. B.* in a plea of trespass; and also to the bill of him
the said *William* against the said *John* for 10 *l.* debt, according
to the custom of our court, before us to be exhibited; and our
said sheriff of *Middlesex* on that day returned to us that the said
J. and *R.* are not found in his bailiwick: whereupon on the
part of the said *William* in our court before us, it is sufficiently
testified that the said *John* and *Richard* run up and down
and secret themselves in your county; therefore we command
you that you take them if they shall be found in your bailiwick,
and them safely keep, so that you may have their bodies before
us at *Westminster* on *Wednesday* next after 15 days of *St. Martin*,
to answer to the said *William* in the plea and bill aforesaid; and
have there then this writ. *Witness, &c.*

An alias.
The *pluries* is
the same, only
often instead of
before.

ANNE, &c. To the sheriff of *Northampton*, greeting:
we command you, as we have before commanded you,
that you take *Charles D.* if he shall be found in your bailiwick,
and him safely keep, so that you may have his body before us at
Westminster on day next after to answer to
George E. in a plea of trespass, and also to the bill, &c. and
have, &c.

If in debt, for 20 *l.* debt, according to the custom, &c.

Cafe, for 40 *l.* upon promise, or for non-performance of a
promise and assumption to the damage of 40 *l.*

Trover, for the conversion of goods to the damage of 40 *l.*

Covenant, in a plea of breach of covenant, to the damage of
the plaintiff 30 *l.*

Affidavit to ob-
tain a special
acetiam.
Pra. Reg. 13.

JOHN D. of *W.* in the county of *S.* clerk, maketh
oath, that on *Thursday* the day of last past,
he this deponent going to view whether the tithe-hay on the
lands of *John H.* of *W.* aforesaid were ready to be set forth,
the said *John H.* did then in the said field, without any reason-
able cause, in a violent manner assault, beat and throw this de-
ponent on the ground, this deponent making no opposition or
resistance against the said *H.* but this deponent being rescued
by some persons present from the said *H.* the said *H.* did again,
as soon as he got loose from the persons that rescued this depo-
nent, a second time assault, throw down, beat and kick this de-
ponent several times about the head and body, so that the blood
gushed

gushed out at his ears, which occasioned this deponent the loss of his speech and hearing for some time as to render him incapable of performing his duty in the aforesaid parish, he being minister of the same: and this deponent further saith, that he the said *H.* hath often declared that it was no sin for any man to kill or destroy this deponent.

John Doddridge.

Sworn *October 24, 1704.*
before me

H. Gould.

Let a *latitat* be issued forth against *John Hart*, with an *acetiam* for 20*l.* at the suit of *J. D.* upon this affidavit.

The judge's order thereupon.

H. Gould.

Dated *October 24, 1704.*

Mandamus.

[613]

ANNE, &c. To the reverend *John C.* knt. and doctor of laws, of the most reverend father in Christ *Thomas* by divine providence lord archbishop of *Canterbury*, primate and metropolitan of all *England*, to whom all and all manner of jurisdiction whatsoever which to the bishop of *Chichester*, the see being full, doth belong, the said see being now vacant is notoriously known to belong in and thro' the whole archdeanary of *Leaves* in the diocese of *Chichester* aforesaid, vicar in spirituals general, and official principal lawfully constituted, or to *Thomas W.* prebendary, surrogate of the said reverend *John C.* greeting: whereas *John R.* and *Gabriel G.* into the office and place of wardens of the parochial church of *New Shoreham* in the county of *Sussex*, according to the antient custom of the same parish were duly nominated and chosen on *Tuesday* in *Easter* week last past for the year ensuing; and altho' the same *John* and *Gabriel* have often offered to take their corporal oath before you as church-wardens, and into the office aforesaid to be by you admittad have often required; nevertheless you the said *John C.* (to whom it doth of right belong to administer such oath) have refused to receive that oath from the same *John* and *Gabriel*, to the great damage and grievance of them the said *John* and *Gabriel*, and to the manifest prejudice of their estate, as by the complaint of the said *John* and *Gabriel* we have understood: we therefore being willing that due and speedy justice be done to the said *John* and *Gabriel* in this behalf as is reasonable, command you, that the oath which church-wardens are accustomed to take, to the said *John* and *Gabriel* you do administer,

A mandamus to the judge of the spiritual court to administer the oath to the churchwardens.

nister, and them into the office of wardens of the parochial church of *New Shoreham* aforesaid you do admit, and cause to be sworn, or signify to us cause to the contrary thereof, left in your default complaint should come to us repeated; and how you shall execute this our command certify to us at *Westminster* on *Monday* next after three weeks of *St. Michael*, returning to us this our writ. Witness *J. Holt*, knt. at *Westminster* 13th day of *July* in the 8th year of our reign.

The return.

I *Thomas W.* prebendary, surrogate to the reverend *John C.* within mentioned, to the most serene lady the now queen do most humbly certify, that the within named *John R.* and *G. G.* were not nominated or elected into the place and office of wardens of the parochial church of *New Shoreham*, nor was either of them the said *John* and *G.* nominated or elected to the place and office of one of the wardens of the same parochial church, in manner and form as by the writ within written is supposed in the county of *Sussex* within mentioned; and for that reason the oath which the wardens of the parochial church aforesaid have been hitherto accustomed to take, to them, or either of them, I have not administered, nor can I administer, neither have I admitted, nor can I admit, the said *John* and *Gabriel*, or either of them, into the said place and office of wardens of the parochial church aforesaid, as by that writ I am within commanded, &c.

[614]

A *mandamus* to the judge of a spiritual court to restore a proctor.

WILLIAM and *Mary*, &c. To *Henry N.* doctor of laws, of the reverend father in Christ *Henry* by divine permission lord bishop of *London*, vicar general in spirituals, and also of the consistorial court of the bishop of *London* official principal lawfully constituted, greeting: whereas *Jeffery L.* into the office and place of one of the proctors of the consistorial court of the bishop of *London* aforesaid was duly admitted and sworn, and hath in that place and office carried and behaved himself well: you nevertheless the said *Henry N.* the premises lightly regarding, the said *J. L.* unduly, and without any reasonable cause, from that place and office have unjustly removed, in contempt of us, and to the no small damage and grievance of him the said *J.* and to the manifest injury of his estate, as by his complaint we have understood: we therefore being willing that due and speedy justice be done to the said *J. L.* in this behalf as is reasonable, command you, as we have often commanded you, that immediately after the receipt of this writ the said *J. L.* into the said place and office of proctor general of the consistorial court of the bishop of *London* aforesaid you do restore, or cause to be restored, with all liberties, privileges, preheminences and commodities to that place and office belonging and appertaining, or signify to us cause to the contrary, left in your default complaint should come to us repeated; and how you shall execute this our command certify to us at *Westminster* on *Wednesday* on the morrow of *St. Martin*, returning to us this our writ, and this by

by no means omit, under the penalty of 80*l.* Witness *J. Holt*,
knt. at *Westminster* 7th day of *November* in the second year of our
reign.

By the court.

Astry.

The answer of the within named *Henry N.* doctor of laws, of
the reverend father in Christ *Henry* by divine permission lord
bishop of *London*, vicar general in spirituals, and also of the con-
sistorial court of the bishop of *London* official principal to this
writ, appears in a certain schedule to this writ annexed.

The return.

Henry Newton.

I *Henry N.* doctor of laws, of the reverend father in Christ
Henry by divine permission lord bishop of *London* vicar gen-
eral in spirituals, and also of the consistorial court of the bishop of
London official principal, by virtue of the writ to me directed,
and to this schedule annexed, to the most serene lord and lady
the now king and queen, on the day and place in the writ afore-
said contained, do most humbly certify, that the consistorial
court of the bishop of *London* in the writ afore said mentioned is
an ancient court, and the supreme consistory of the episcopal see
of *London*: and I do farther most humbly certify, that the said
consistorial court of the bishop of *London*, of *Canterbury* of the
arches, *London*, and also the prerogative court of *Canterbury*,
and the high court of admiralty of *England*, and other ecclesi-
astical courts, are held, and have been long held, in a certain inn
called *Doctors Commons*, situate in the parish of *St. Benedict* near
Paul's Wharf in the ward of *Castle Baynard*, *London*, in which
said inn the judges of the courts afore said, and also very many
doctors of law, advocates, proctors, and other officers attending
the said courts, constantly have resided, and yet do reside, for
the exercise of their offices there respectively, and that the ex-
pences in and about the courts of justice, and other publick places
in and about the inn afore said, and other publick necessary
charges concerning the judges, advocates, proctors and officers
afore said are sustained, and always hitherto have been accus-
tomed to be sustained, at the costs of the judges, advocates,
proctors, and other officers and ministers of the same courts,
who have come to, and have been accustomed to come to the
said courts of justice and other publick places to transact their
business; and on that account, as often as it was necessary, the
said judges, advocates, proctors, and other officers and ministers
of the courts afore said, have assessed on themselves and levied,
and have been accustomed to assess and levy, certain rates or
taxes to defray such charges and expences; and that the said
Jessy being assessed to 10*s.* on him to defray the publick charges
and expences afore said in and about the courts of justice, and other
publick places afore said, and other publick necessary charges con-
cerning the judges, advocates, proctors and officers afore said so
as afore said taxed, had denied to pay the same: wherefore I

Henry

[615]

Henry N. being judge of the said consistorial court of the bishop of *London*, and sitting in the judgment seat in the inn aforesaid, on the 5th day of *July* in the second year of the reign of the within written lord and lady the now king and queen, for the cause aforesaid did deny audience to the said *Jeffery L.* in a certain cause between *Mary N.* otherwise *H.* against *Thomas H.* in a cause of nullity of marriage by reason of the tender age of her the said *Mary*, audience of me the judge then and there in that cause requiring, until he should submit himself in the premisses, or that court should otherwise order therein; and the said *Jeffery* from the place or office of one of the proctors of the same court I have not otherwise or in other manner removed: and I do farther certify, that the bishop of *London* for the time being is, and for time immemorial hath been, supreme judge of the consistorial court of *London* aforesaid, and hath heard and determined, and hath been accustomed to hear and determine, all appeals or plaints whatsoever by any the officers, proctors or ministers whatever of the court aforesaid, to the bishop of *London* aforesaid brought, and also hath reformed, corrected, reversed and restored, and to reform, correct, reverse and restore, for all the said time hath been accustomed, all grievances whatever by the judge of the court aforesaid, on any the officers, proctors or ministers whatever of that court unduly committed or inflicted (as justice required it) and that the said *Jeffery* hath not hitherto brought any complaint in this behalf to the said bishop of *London*, nor submitted himself to the court aforesaid.

[616]

Mittimus.

Mittimus to the justices of the C. B. of *dedimus* for the admission of a guardian for the plaintiff, and a return thereof into the chancery.

CHARLES, &c. To our justices of the bench, greeting: the tenors of our certain writ of *dedimus potestatem* to our trusty and beloved *Edward Herbert W.* knt. and our beloved *Richard H.* esq; *George E.* esq; and *William N.* gent. directed, of and for the admission of a guardian or guardians of *J. O.* gent. being under age, to prosecute and defend a plea which is before you by our writ between the said *John* and *William S.* esq; in a plea, why whereas by the common council of our kingdom of *England* it is provided, that it shall not be lawful for any person to commit waste, sale or destruction of lands, houses, woods or gardens, which he holds by the law of *England*, the same *William* of woods, which he holds by the law of *England* of the inheritance of the said *John* in *King sinborne*, hath committed to the said *John* waste, sale and destruction, to the disinheritance of him the said *John*, and against the form of the provision aforesaid, as it is said, of the return or manner of the execution of the same writ, and also of a certain schedule to the same writ annexed

annexed sent to us into our chancery, and remaining on the files of our same chancery, we send to you inclosed in these presents, and command you, that the tenors aforesaid being inspected, you farther cause to be done for the admission of such guardian or guardians, according to the law and custom of our kingdom of *England*. Witness ourself at *Westminster* 25th February in the third year of our reign.

C H A R L E S, &c. To our trusty and beloved *Edward* The dedimus.
Herbert W. knt. and to our beloved *R. H. esq;* *G. E. esq;*
and *W. N. gent.* Know ye, that we give to you, or any two of you, power to admit a guardian of *John O.* being under age, as it is said, to prosecute and defend a plea which is before our justices of the bench, between the said *John* and *William S. esq;* in a plea, why whereas by the common council of our kingdom of *England* it is provided, that it shall not be lawful for any person to commit waste, sale or destruction of lands, houses, woods or gardens, which he holds by the law of *England*, the same *William* of woods which he holds by the law of *England* of the inheritance of the said *John* in *King sinborne* hath committed to the said *John* waste, sale and destruction, to the disinheri-
tance of him the said *John*, and against the form of the provision aforesaid: therefore we command you, or two of you, that when you have admitted that guardian, you certify to us the name of the same guardian under your or two of your seals, returning to us this writ. Witness ourself at *Westminster* 17th day of *December* in the second year of our reign. *Reynolds.* By the lord chancellor of *England*, on the petition of the plaintiff *J. C.*

The execution of this commission appears in a certain schedule to this writ annexed. [617]

Richard H. William N. received 6s. at *Colclough.* By virtue The return.
of the writ of the lord the king to this schedule annexed to us, and others directed, on the 20th day of *January* in the second year of the reign of the said lord the king: we whose names are subscribed, admitted *J. O. esq;* the father of the said *John O. gent.* in the writ aforesaid named guardian and *prochein amy* of him the said *John*, being under age, to prosecute and defend the plea which is before the justices of the said lord the king of the bench, by the writ of the lord the king, between the said *John* plaintiff, and *W. S. esq;* defendant, in a plea of waste, according to the tenor of the same writ. In witness whereof we have set our seals to this schedule the day and year abovesaid, &c.

Richard Hall. William Noyer.

A mittimus to the crown office in B. R. in Ireland, on a judgment affirmed on a special verdict in forcible entry.

JA M E S, &c. To our trusty and beloved *John L. esq;* our second justice assigned to hold pleas before us in our kingdom of *Ireland*, greeting: whereas by a certain inquisition taken for our most dear brother *Charles the Second*, late king of *England, Scotland, France and Ireland*, at a special sessions of the peace held at *B.* in and for *Queens county* on *Saturday*, to wit, the 25th day of *September* in the 32d year of his reign, before *Robert F. esq;* one of his privy council in *Ireland*, *J. W. esq;* *J. G. esq;* *T. P. esq;* *R. H. esq;* *W. G. esq;* and *A. C. esq;* his justices and commissioners assigned to preserve the peace in and for *Queens county* aforesaid; and also to inquire of all and singular treasons and felonies, and likewise to hear and determine all and singular unlawful assemblies, entries with force, detentions, extortions, oppressions, crimes, contempts, trespasses, and other misdemeanors and offences whatsoever, except treasons and felonies against his peace committed or to be committed by virtue of letters patent of commission under his great seal of his kingdom of *Ireland*, to them and others therefore directed, bearing date at *Dublin* the 15th day of *March* in the 32d year of his reign, by the oath of good and lawful men of the county aforesaid, it is presented that *Edward M. of G.* in *Queens county* aforesaid, *esq;* *H. B. of S.* in the said county, gent. *J. B. of C.* in the said county, gent. *T. N. the elder*, of *B.* in the county aforesaid, gent. *T. N. the younger*, of the same in the same county, gent. *P. L. of S.* in the county aforesaid, butcher, and *M. B. of E.* in the county aforesaid, gent. other malefactors and disturbers of his peace, being taken and associated to them in a warlike manner arrayed, to the number of 100 persons, whose names to the jurors aforesaid are unknown, on the 7th day of *September* in the 32d year of his reign, at *T.* in the county aforesaid riotously and routously assembled themselves together; and so assembled then and there with force and arms, to wit, staves, fwords, knives, prongs, stones, and other arms defensive and invasive into one messuage, with the appurtenances and 60 acres of land, being the freehold of *Elizabeth W.* widow, on the peaceful possession of the said *E. W.* then and there with the like force and arms, and with a strong hand enter'd; and also on the said 7th day of *September* in the year aforesaid, at *S.* in the county aforesaid, into one messuage, with the appurtenances and 400 acres of land, being the freehold of the said *E. W.* on the peaceful possession of the said *E. W.* with the like force and arms, and with a strong hand entred; and also on the same day and year, at *E.* in the county aforesaid, into one messuage, with the appurtenances and 150 acres of land, being the freehold of the said *E. W.* on the peaceful possession of the said *E. W.* with the like force and arms, and with a strong hand entred; and also on the said day and year at *C.* in the county aforesaid, into one messuage, with the appurtenances and 150 acres of land, being the

the freehold of the said *E. W.* with the like force and arms, and with a strong hand enter'd, and the said *E. W.* from her possession of the said several messuages and lands, then and there with the like force and arms, and with a strong hand expelled and disseised; and the said *E. W.* so expelled and disseised from the said several messuages, with the appurtenances and lands, with force of arms and with a strong hand, riotously and routously have kept out and yet do keep out against his peace, crown and dignity, and against the form of the statute in that case made and provided: and afterwards, to wit, on the 28th day of *September* in the year abovesaid, the said *J. W. J. G. and T. P.* in their proper persons, all and singular the messuages and lands in the inquisition afore said contained, mentioned, with the appurtenances of the said *E.* reseised, and then restored and caused the said *E.* to have full possession and seisin thereof; which said judgment and the proceedings thereon, the said late king for certain reasons caused to be brought before him to be determined: and afterwards, to wit, on *Saturday* next after the morrow of *All Souls* in the second year of our reign, before us in the kingdom of *Ireland*, it was considered, that the said *E. M. H. B. &c.* by a certain jury of the country, between us and the said *E. M. H. B. &c.* were and every of them was of the premises in the indictment afore said above against them mentioned, acquitted, and should be and go thereof without day: and it was further considered, that the said *E. M. H. B. &c.* to all and singular the premises afore said, in the indictment afore said above mentioned, which they had at the time of the caption of the inquisition afore said should be restored, as by the inspection of the record and proceedings thereof, which we caused to be brought into our court before us at *Westminster* in *England*, to correct errors in the same, appears to us on record; and whereof in our same court before us at *Westminster* in *England*, on *Monday* next after the octave of *St. Martin* last past, on mature deliberation had the judgment afore said so as afore said given we have affirmed: and we thereupon being willing that all those things which in our said court in *Ireland* are lawfully transacted and adjudged, should be carried into due and speedy execution, signify to you all the matters afore said above recited to be true; and also the record and proceedings afore said to this writ annexed we remit to you affirmed, that such execution and proceedings may be made thereon, as according to the law and custom of our kingdom of *Ireland* ought to issue and be made, notwithstanding our writ of error thereon prosecuted. Witness, &c.

[618]

WILLIAM, &c. To our trusty and beloved *Richard* R. esq; our chief justice assigned to hold pleas in our court before us in our kingdom of *Ireland*, greeting: whereas the lord *James* the Second, late king of *England*, sent to his trusty and well-beloved counsellor *William D. kn.* then his chief justice assigned to hold pleas in the court of the late lord the king, be-

Mittimus from the K. B. in England to the chief justice in Ireland, on a judgment affirmed in England.

fore the then king himself, in his kingdom of *Ireland*, his writ close in these words, to wit, *James* the Second, &c. To our trusty and well-beloved counsellor *William D.* knt. our chief justice assigned to hold pleas in our court before us in our kingdom of *Ireland* (*recite all the writ, return and transcript, and conclude*) as by the inspection of the record and proceedings thereof, which we lately for certain causes of error caused to be brought into our court before us, appears to us on record: whereupon the said *D.* as before says; that in the record and proceedings aforesaid, and also in the adjudication of the execution aforesaid, there is manifest error, alledging the errors aforesaid by him above alledged; and he prays that the judgment aforesaid for the errors aforesaid, and others, being in the record and proceedings aforesaid may be reversed, annulled and held as intirely void; and that the same *D.* to all things which he by reason of the judgment aforesaid hath lost may be restored, and that the said *Abel* to the errors aforesaid may rejoin: and thereupon the said *Abel* says, that either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, or in the adjudication of execution upon that judgment there is no error; and he likewise prays that our court now here may proceed as well to the examination of the record and proceedings aforesaid, as of the matters aforesaid above for error assigned, and that the judgment aforesaid may be affirmed: and whereon in our court before us at *Westminster* from the day of *Easter* in three weeks, in the first year of our reign, on mature deliberation thereon had, it is considered that the judgment aforesaid, and the adjudication of execution thereon be in all things affirmed, and remain in its full force and effect; the said causes and matters above for error assigned in any wise notwithstanding: and further, by our said court before us at *Westminster* it is considered, that the said *Abel R.* do recover against the said *D.* 18 *l.* to the same *Abel* by our same court, according to the form of the statute in such case made and provided, adjudged for his costs, charges and damages which he hath sustained by reason of the delay of the execution of the judgment aforesaid, on pretence of the prosecution of the said writ of error, and that the said *Abel* may have thereof execution, as by the record thereof in our said court before us at *Westminster* remaining more fully appears: and we thereupon being willing that all things which in the said court of the lord *James* the Second, late king of *England*, before the late king himself, called the king's court in his kingdom of *Ireland*, are lawfully transacted and adjudged, should be carried into due and speedy execution: therefore we command you, that such execution and proceedings thereon be made as according to the law and custom of our kingdom of *Ireland* ought to issue and be made; the writ of error aforesaid notwithstanding. Witness, &c.

WILLIAM, &c. To *Richard P.* knt. our chief justice, and his companions, our justices assigned to hold pleas in our court, called the king's court in our kingdom of *Ireland*, greeting; whereas *R. P.* merchant, lately in our court before you the said *Richard P.* and your companions, then our justices of the common bench in our kingdom of *Ireland*, by our writ, and by the judgment of the same court, recovered against *S. A.* late of *Tangmore* in the county of *Wexford*, gent. 19 *l.* 2 *s.* 1 *d.* for his damages which he sustained as well by reason of a certain trespass on the case by him the said *S.* to the same *R. P.* lately done, as for his costs and charges by him about his suit in that behalf expended, whereof the same *S.* is convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court, called the king's court in our kingdom of *Ireland*, for certain causes of error appears to us on record; and whereas the judgment aforesaid afterwards in our said court, called the king's court in our kingdom of *Ireland*, by the judgment of the same court was in all things affirmed; and it was farther by the same court considered, that the said *R. P.* should recover against the said *S.* 13 *l.* 19 *s.* 8 *d.* sterling to the same *Richard*, according to the form of the statute in such case made and provided, adjudged for his damages, costs and charges, which he had by reason of the delay of execution of the judgment aforesaid, on pretence of the prosecution of the said writ of error, and that the said *R. P.* should have thereof execution, &c. as by the record and proceedings thereof, which we caused to be brought into our court before us at *Westminster* by our writ of error of and upon the premisses prosecuted, appears to us on record: and whereas because it appeared to our said court before us at *Westminster*, that the several writs of error aforesaid were vitious and defective, and insufficient in law to maintain him the said *S. A.* to proceed farther on the judgment aforesaid, it was considered, that the several writs of error aforesaid be quashed, vacated, and held as intirely void, and that all farther proceedings on the writs of error aforesaid cease, as by the record thereof likewise appears to us: therefore we command you, that by our writ out of our court before us, called the king's court in our kingdom of *Ireland*, to be issued to our justices of the common bench in our kingdom of *Ireland* to be directed, you cause our said justices of our said court of the common bench in our kingdom of *Ireland* to be commanded, that they proceed to grant execution for the said *R. P.* against the said *S.* out of our said court of the common bench in our kingdom of *Ireland* of and upon the judgment aforesaid in the same court so as aforesaid recovered; our writs of error aforesaid, and the affirmance of the judgment aforesaid upon the said writ of error to you thereon directed, in any wise notwithstanding. *Witness, &c.*

Mittimus upon a judgment in C. B. in *Ireland*, affirmed in K. B. there, afterwards brought by writ of error to K. B. here, and both writs of error quashed.

Otherwise to
K. B. in Ireland
on a judgment
for the defend-
ant in ejectment
affirmed in a
writ of error in
the K. B. in
England.

WILLIAM the Third, &c. To our trusty and beloved *Richard P.* knt. our chief justice and his companions assigned to hold pleas in our court, called the king's court in our kingdom of *Ireland*, greeting: whereas *Gilbert T.* esq; lately in our court, called the king's court, before us in our kingdom of *Ireland*, by the judgment of the same court, according to the form of the statute in such case lately made and provided, recovered against *Andrew R.* 68 l. sterling for his costs and charges by him about his defence in a certain action of trespass and ejectment sustained by the said *A. R.* against the same *G. T.* lately prosecuted, as by the inspection of the record and proceedings thereof, which we caused to be brought into our court before us at *Westminster* by our writ of error, appears to us on record; which said judgment afterwards in our same court before us at *Westminster* is in all things affirmed: and we thereupon being willing that all things which in our said court, called the king's court, before us in our said kingdom of *Ireland* are lawfully transacted and adjudged, should be carried into due and speedy execution: therefore we command you, that such execution and proceedings be made on the judgment aforesaid in our said court, called the king's court in our said kingdom of *Ireland*, before you remaining for the costs and charges aforesaid, as according to the law and custom of our kingdom of *Ireland* ought to be issued and made; our writ of error aforesaid in any wise notwithstanding. Witness, &c.

[620]
Otherwise.

ANNE, &c. To our trusty and well beloved counsellor *Richard P.* knt. our chief justice assigned to hold pleas in our court before us in our kingdom of *Ireland*, greeting: whereas we lately commanded you by our writ of error close in these words, to wit, *Anne*, &c. To our trusty and well beloved *Richard P.* knt. our chief justice assigned to hold pleas in our court before us in our kingdom of *Ireland*, greeting: because in the record and proceedings, and also in the rendition of the judgment; &c. (so on the writ of error to) Witness ourself at *Westminster* 21st day of *October* in the first year of our reign. *Cesar*. And you to that writ returned to us thus: that the record and proceedings of the plea, whereof in the writ aforesaid mention was made, with all things touching them, before us wherefore, &c. on the day and place in the same writ contained, you sent in a certain record to the writ aforesaid annexed; and you certified to us, that you had caused notice to be given to *George H.* that he be there to proceed in the plea aforesaid, as you was by that writ commanded; which said record so by you sent to us follows in these words, to wit, pleas before the lord the king at the king's court of *Hilary* term in the 13th year of the reign of the lord *William* the Third, by the grace of God, of *England*,
Scotland,

Scotland, France and Ireland king, defender of the faith, &c.
Witness R. Pyne, knt.

Savage.

The county of *Roscommon*, **B**E it remember'd, that otherwise, to wit, in *Michaelmas* term last past before the lord the king at the king's court came *George H.* by *J. W.* his attorney, and produced here in the court of the said lord the king then there his certain bill against *William H.* esq; in the custody of the marshal, &c. in a plea of trespass and ejectment; and there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, the county of *Roscommon*, to wit, *George H.* complains of *William H.* esq; being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself in a plea of trespass and ejectment, for this, to wit, that whereas *C. D.* gent. on the first day of *October* in the year of the Lord 1701, at *Lisduffe* in *Clare* in the county of *Roscommon* aforesaid, had demised, granted and to farm let, to the said *George* 24 acres of good land of Ireland (plantation measure) in *Wismore*, otherwise *Wissmore*, three gueves and 41 acres of like land and measure with the appurtenances in *Wisduffe*, 4 gueves in *Clare*, situate, lying and being in the barony of *Roscommon* and county of *Roscommon* aforesaid; to have and to hold the demised premises aforesaid with the appurtenances to the same *George H.* and his assigns, from the said first day of *October* in the year aforesaid unto the full end and term of 11 years from thence next ensuing and fully to be compleat and ended: by virtue of which said demise the same *George H.* on the second day of *October* aforesaid in the year aforesaid into the demised premises aforesaid with the appurtenances entred, and was thereof possessed, until the said *William H.* afterwards, to wit, on the third day of *October* aforesaid in the year aforesaid, with force and arms, &c. into the demised premises aforesaid with the appurtenances in and upon the possession of the said *George* thereof entred, and him the said *George* from his possession aforesaid, his term therein not yet ended, ejected, expelled and amoved, and him the said *George* so thereout ejected, expelled and amoved, from his possession aforesaid thereof hath kept out, and yet doth keep out; and other outrages on him then and there committed, against the peace of the said lord the now king, and to the damage of him the said *George* 200 l. sterling: and therefore he produces the suit, &c.

And now on this day, to wit, *Wednesday* next after the octave of *St. Hilary* in this same term, until which day the said *William H.* had leave to imparl to the bill aforesaid, and then to answer, before the lord the king at the king's court comes as well the said *George* by his attorney aforesaid, as the said *William* by *T. H.* his attorney: and the said *William* defends the force and injury when, &c. and says, that he is not guilty of the trespass and

[621]

ejectment aforesaid in manner and form as the said *George* above against him complains: and of this he puts himself on the country: and the said *George* likewise, &c. Therefore let a jury thereon come before the lord the king at the king's court on *Wednesday* next after the octave of the purification of the blessed virgin *Mary*, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. On which day before the lord the king at the king's court come the parties aforesaid by their attornies aforesaid; and the sheriff hath not sent thereof the writ, therefore as before let a jury thereon come before the lord the king at the king's court on *Wednesday* next after 15 days of *Easter*, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Before which day, to wit, *Wednesday* next after 15 days of *Easter*, to wit, on the 8th day of *March* last past the lord king *William* the Third departed this life, and the lady queen *Anne* him the late king in the government of this kingdom of *Ireland* succeeded, and took upon herself the government of this kingdom of *Ireland*: on which day, to wit, *Wednesday* next after 15 days of *Easter* before the said lady the queen at the queen's court aforesaid come the parties aforesaid by their attornies aforesaid; and the sheriff hath not sent thereof the writ, therefore as before let a jury thereon come before the lady the queen at the queen's court on *Friday* next after the morrow of the holy *Trinity*, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. On which day the jury aforesaid between the parties aforesaid was put thereof between them in respite before the lady the queen at the queen's court until *Friday* next after the morrow of *All Souls*, unless the justices of the lady the queen, assigned to take assises for the county of *Roscommon* aforesaid, by the form of the statute, &c. should first come on *Friday* the 10th day of *July* at *R.* in and for the county of *R.* aforesaid, &c. On which day before the said lady the queen at the queen's court come the parties aforesaid by their attornies aforesaid; and the said justices of assise before whom, &c. have sent here their record before them had in these words, to wit, afterwards the day and year within contained, before *R. C. knt.* the chief justice of the lady the queen, assigned to hold pleas in the court of the said lady the queen of the common bench, assigned to hold pleas in the court of the lady the queen before the queen herself in *Ireland*, and *J. M. esq;* one of the justices of the lady the queen, assigned to hold pleas in the court of the said lady the queen before the queen herself in *Ireland*, the justices of the said lady the queen, assigned to take assises in the county of *R.* by the form of the statute, &c. comes as well the within named *G.* by his attorney within written, as the within written *W.* by *J. E.* his attorney; and the jurors of that jury, whereof mention is within made, being called, some of them, to wit, *G. St. George, bart.*
E. E.

E. E. bart. *J. D.* esq; *A. B.* esq; *R. S.* esq; and *D. D.* gent. come, and on that jury are sworn; and because the rest of the jurors of the same jury have not appeared, therefore others from the by-standers by the sheriff of the county aforesaid, hereto elected at the request of the said *G.* and by the command of the justices aforesaid, are added anew, whose names to the panel within written are put, according to the form of the statute in such case lately made and provided; and the jurors so added anew, to wit, *E. G.* esq; &c. being called likewise come, who to say the truth of the within contained, together with the other jurors aforesaid first impanelled and sworn, being elected, tried and sworn, say on their oath, that the said *W. H.* is guilty of the trespass and ejectment within written in manner and form as the said *G.* within against him complains; and they assess the damages of him the said *G.* by reason of that trespass and ejectment, besides his costs and charges by him about his suit in this behalf expended, to 8 *d.* sterling, and for those costs and charges to 6 *d.* sterling: therefore it is considered, that the said *G.* do recover against the said *W.* his term of and in the demised premises aforesaid with the appurtenances yet to come to his damages aforesaid by the jurors aforesaid in form aforesaid assessed, and also 13 *l.* 11 *s.* 6 *d.* to the same *G.* for his costs and charges by him about his suit in this behalf expended, by the court of the said lady the queen here with his assent of increase adjudged; which said damages in the whole amount to 13 *l.* 12 *s.* 8 *d.* and be the said *W. H.* taken, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court before us for certain causes of error to be corrected, appears to us on record: and whereas afterwards, to wit, on Monday next after the morrow of the ascension of the Lord in the 2d year of our reign before us at *Westminster* came the said *W. H.* by *P. C.* his attorney, and immediately said, that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there was manifest error, in this, to wit, that where by the record aforesaid it appears that the judgment aforesaid in the plea aforesaid in form aforesaid given was given for the said *G.* against the said *W.* where by the law of the land of the kingdom of the lady the queen of *Ireland* the said judgment ought to have been given for the said *W.* against the said *G.* therefore in that it is manifestly erroneous: and the said *G.* on the same day being solemnly called by *T. G.* his attorney likewise came, and said, that the record and proceedings aforesaid so as aforesaid sent were defectively, and not rightly certified; and that the record or writing itself of the judgment aforesaid remaining with you our said chief justice, assigned to hold pleas in our court before us in our kingdom of *Ireland*, from whence the said transcript or such certificate was made, varied and was different from the said certificate thereof, in manner and form following, to wit, where after the adjudication and entry of the writ of *venire facias* in the said certificate or transcript it is contained

[622]

tained thus : before which day, to wit, *Wednesday* next after 15 days of *Easter*, to wit, on the 8th day of *March* last past the lord king *William* the Third departed this life, in the record or writing itself in the custody of you our said chief justice there and in lieu thereof it is contained thus : before which day, to wit, on the 8th day of *March*, the lord king *William* the Third departed this life ; and where a little after in the same certificate or transcript it is contained thus : let a jury thereon come before the lady the queen at the queen's court on *Friday*, in the said record or writing in the custody of you our chief justice there, and in lieu thereof it is contained thus ; let a jury thereon come before the lady the queen at the king's court on *Friday* ; and where a little after in the said certificate it is contained thus, was put thereof between them in respite before the lady the queen at the queen's court, in the record or writing itself aforesaid, in the custody of you our chief justice aforesaid there ; and in lieu thereof it is contained thus, was put thereof between them in respite, before the lady the queen at the king's court ; and also afterwards in that certificate in the beginning of the entry of the *posse*, or return of the writ of the lady the queen of *nisi prius* it is contained thus ; afterwards, the day and place within contained, before *Richard Cox*, knt. chief justice of the lady the queen assigned to hold pleas in the court of the said lady the queen of the common bench, assigned to hold pleas in the court of the lady the queen before the queen herself in *Ireland*, and *J. M.* in the said record or writing in the custody of you our chief justice aforesaid there ; and in lieu thereof it is contained thus, afterwards the day and place within contained, before *R. C.* knt. chief justice of the lady the queen of the common bench in *Ireland*, and *J. M.* and also where of and in the entry of the judgment aforesaid, in the certificate aforesaid it is contained thus, yet to come, to his damages aforesaid, by the jury aforesaid in form aforesaid assessed, in the record or writing itself in *Ireland* remaining with you our chief justice aforesaid there ; and in lieu thereof it is contained thus, yet to come, and his damages aforesaid by the jury aforesaid, in form aforesaid assessed : and because it was not known to our same court before us, whether the allegation of the said *George* aforesaid was true or not ; and it was expedient to be certified thereof before our said court proceeded further in that behalf, you our chief justice aforesaid assigned to hold pleas before us in our kingdom of *Ireland* was commanded, that the record and proceedings aforesaid, and the rolls and memorandums concerning them, remaining in your custody in our said court in *Ireland* being searched, what you should find in the same of the premisses, or any of them, by the said *George* as aforesaid alledged, you should without delay certify to us wheresoever, &c. in *England*, together with the said writ to you therefore directed : and you our chief justice assigned to hold pleas in our court before us in our kingdom of *Ireland* have certified, that the record and proceedings aforesaid, and

and the rolls and other memorandums remaining in your cuſtody in our court before us in *Ireland* being ſearched, you have found that the allegation of the ſaid *George* is true, to wit, that after the adjudication and entry of the writ of *venire facias* in the record or writing aforeſaid remaining in your cuſtody, from which the certificate aforeſaid was made, it is contained thus, to wit, before which day, to wit, on the 8th day of *March*, the lord king *William* the Third departed this life: and a little after, in the ſaid record or writing remaining with you, it is contained thus, to wit, was put thereof between them in reſpite before the lady the queen at the king's court; and that at the beginning of the entry of the *poſtea* or return of the writ of the lady the queen, of *niſi prius* entered in the ſaid record or writing remaining in your cuſtody, it is contained thus: afterwards the day and place within contained before *R. C.* knt. chief juſtice of the lady the queen of the common bench in *Ireland*, and *J. M.* and that in the entry of the judgment in the cauſe aforeſaid it is contained thus, to wit, yet to come, and his damages aforeſaid by the jury aforeſaid aſſeſſed: and you further certified that it is not there in the record or writing aforeſaid from whence the certificate aforeſaid was made contained thus, before which day, to wit, *Wednesday* next after 15 days of *Eaſter*, to wit, on the 8th day of *March* laſt paſt the lord king *William* the Third departed this life; or thus, to wit, let a jury thereon come before the lady the queen at the queen's court on *Friday*; or thus, was put thereof between them in reſpite before the lady the queen at the queen's court; or thus, to wit, afterwards the day and place within contained, before *R. C.* knt. chief juſtice of the lady the queen, aſſigned to hold pleas in the court of the ſaid lady the queen of the common bench, aſſigned to hold pleas in the court of the ſaid lady the queen before the queen herſelf in *Ireland*; or thus, to wit, yet to come, to his damages aforeſaid by the jury aforeſaid in form aforeſaid aſſeſſed: and thereupon the ſaid *William H.* as before, ſaid, that in the record and proceedings aforeſaid, and alſo in the rendition of the judgment aforeſaid there was manifeſt error, alledging the errors aforeſaid by him in form aforeſaid alledged; and prayed that the judgment aforeſaid for the errors aforeſaid, and others, being in the record and proceedings aforeſaid, might be reverſed, annulled, and held as intirely void; and that he might be reſtored to all things which he loſt by reaſon of the judgment aforeſaid, &c. and that the ſaid *G. H.* to thoſe errors might rejoin: and thereupon the ſaid *G.* ſaid that there was no error either in the record and proceedings aforeſaid, or in the rendition of the judgment aforeſaid; and prayed that the court of the ſaid lady the queen here might proceed to the examination, as well of the record and proceedings aforeſaid as of the matters aforeſaid above for error aſſigned, and that the judgment aforeſaid might be in all things affirmed: and whereon in our court before us at *Weſtminſter*, from the day of *Eaſter* in three weeks in *Eaſter* term in the third year of our reign, upon mature deliberation

[623]

ration thereon had, it is considered that the judgment aforesaid be in all things affirmed, and stand in its full force and effect; the said causes and matters above for error assigned in any wise notwithstanding: and it is further by our said court before us at *Westminster* considered, that the said *G.* do recover against the said *W.* 30 *l.* to the same *G.* by our same court, according to the form of the statute thereof made and provided, adjudged for his costs, charges and damages which he hath sustained by reason of the delay of execution of the judgment aforesaid on the pretence of prosecuting the said writ of error, and that the said *George* may have thereof execution, as by the record thereof in our said court before us at *Westminster* remaining more fully appears: and we thereupon being willing that all things which in the said court of the said lord *William* the Third late king of *England*, &c. before the late king himself, called the king's court in our kingdom of *Ireland*, and also in our same court before us in our kingdom of *Ireland*, are lawfully transacted and adjudged, should be carried into due and speedy execution, command you that such execution and proceedings may be made thereon, as according to the law and custom of our kingdom of *Ireland* ought to issue, and be made; the writ of error aforesaid notwithstanding. Witness *J. Holt*, knt. at *Westminster*, the 16th day of *June* in the third year of our reign.

Holt. Coleman.

Otherwise.

ANNE, &c. To our trusty and beloved *Richard P.* knt. our chief justice assigned to hold pleas in our court before us in our kingdom of *Ireland*, greeting: whereas we lately commanded you by our writ of error close in these words, to wit, *Anne*, &c. To our trusty and beloved *Richard P.* knt. our chief justice assigned to hold pleas in our court before us in our kingdom of *Ireland*, greeting: because in the record and proceedings of a certain plea which was in the court of the lord *William* the Third, late king of *England*, before the late king himself in his kingdom of *Ireland* by bill (*and so recite the writ and return, and the whole transcript and conclude*) as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court before us for certain causes of error appears to us on record: whereupon the said *Mary* said, that in the record and proceedings aforesaid, and also in the rendition of the judgment of the plea aforesaid there is manifest error, alledging the errors aforesaid by her above alledged; and prayed that the judgment aforesaid, for the errors aforesaid, and others, being in the record and proceedings aforesaid might be reversed, annulled and held as intirely void; and that the same *Mary* might be restored to all things which she lost by reason of the judgment aforesaid, and that the said *Joseph* to the errors aforesaid might rejoin: and thereupon the said *Joseph* said that there was no error either in the record and proceedings aforesaid, or in the rendition of the judgment of the plea

plea aforesaid : and likewise prayed that our court before us at *Westminster* might proceed as well to the examination of the record and proceedings aforesaid as of the matters aforesaid above for error assigned, and that the judgment aforesaid might be in all things affirmed. And whereon in our court before us at *Westminster*, on *Saturday* next after 15 days of *St. Martin* in *Michaelmas* term, in the first year of our reign, on mature deliberation thereon had, it is considered that the judgment aforesaid be in all things affirmed and stand in its full force and effect, the said causes and matters above for error assigned in any wise notwithstanding : and it is further by our said court before us at *Westminster* considered, that the said *Joseph H.* do recover against the said *Mary C.* 12 l. to the same *Joseph* by our same court, according to the form of the statute thereof lately made and provided, adjudged for his costs, charges and damages which he sustained by reason of the delay of execution of the judgment aforesaid, on the pretence of prosecuting the said writ of error ; and that the said *Joseph* may have thereof execution, as by the record thereof in our same court before us at *Westminster* remaining more fully appears : and we thereupon being willing that all things which in the said court of the said lord *William* the Third late king of *England*, &c. before the late king himself, called the king's court in his kingdom of *Ireland*, and also in our same court before us in our kingdom of *Ireland* are lawfully transacted and adjudged, should be carried into due and speedy execution, command you that such execution and proceedings be thereon made, as according to the law and custom of our kingdom of *Ireland*, ought to issue and be made ; our writ of error aforesaid in any wise notwithstanding. Witnesses *J. Holt*, knt. at *Westminster* the 28th day of *November* in the first year of our reign.

Holt. Coleman.

Non omittas.

[624]

WILLIAM, &c. To the sheriff of *North'ton*, greeting : we command you, that you do not omit on account of any liberty of our town of *North'ton* in your county, but that you enter into it and take *Robert S.* gent. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on day next after to answer to *William A.* the elder, gent. in a plea of trespass, and also to the bill of him the said *William* for 78 l. debt, according to the custom of our court before us to be exhibited ; and have there then this writ. Witnesses *J. Holt*, knt. at *Westminster* 28th day of *November* in the 12th year of our reign.

*Non omittas
latisat.*

Non ponend' in Assis'.

West. 2. c. 38.

ANNE, &c. To the sheriffs of *London*, greeting: whereas by the common council of *England* it is provided, that men exceeding the age of threescore and ten years, or being continually sick, shall not be put in assises, juries or recognisances: we command you, that if *Richard C.* the elder, of *London*, bookseller, is above the age aforesaid, or is continually sick, then do not put or cause to be put him the said *Richard* in any assises, juries or recognisances, against the form of the provision aforesaid; and the distress, if you have made any on the same *Richard* on that account, without delay to him. Witness ourself at *Westminster* the 24th day of *January* in the 8th year of our reign.

The allowance
thereof to the
sheriff.

Allowed 10 Feb. 1709, by { *Richard Hoare*, knt.
and
Thomas Dunk, esq; } sheriffs.

Affidavit must be made before a master in chancery that the person is above sixty years old, and left with the curfitor.

[626]

Privilege.

A writ of privilege from
arrest for a
filazer of K. B.

GEORGE, by the grace of God, of *Great Britain, France* and *Ireland* king, defender of the faith, &c. To the sheriffs of *London*, greeting: whereas as well by reason of our royal dignity as by a custom in our court and of our progenitors, late kings and queens of *England*, before us and our same progenitors, for time immemorial used and approved in the same all and every the filazers, attornies, clerks and officers of the same court, who are bound by oath to follow their functions for us and our people, ought not, nor for all the time aforesaid have been accustomed to be taken, arrested, imprisoned, or against their will drawn or compelled to answer to any person not being a filazer, attorney, clerk or officer of some of our courts, before any judges secular, elsewhere or otherwise than by bill or bills to be filed against them in our said court before us in or upon any pleas or complaints which do not concern us (pleas or causes of felony and appeals, and pleas of freehold only excepted:) nevertheless some evil disposed persons, not being filazers, attornies, clerks or officers of any of our courts, notwithstanding our dignity, the custom and privilege aforesaid, do, as we have understood, intend to take, arrest and imprison, or before you

you have drawn, or do intend by your servants to draw in plea *James W.* esq; being one of the filazers of our said court, before us, whose constant attendance is required in our same court, to the detriment and manifest diminution of our dignity, the custom and privilege aforesaid, to the great damage of many of our subjects prosecuting and defending in our said court, and the no small prejudice and grievance of the same *James W.* which, should it be permitted, would for the future be a very bad example for others; wherefore the same *James W.* hath implored us to grant him his proper remedy in this behalf: and we being willing that what is just and reasonable should be done for the same *James W.* and likewise that the honour, custom, liberty and privilege of our said court should be inviolably preserved, command and firmly injoin you, that you, and each of you, do wholly desist from taking, arresting, imprisoning, or in any wise molesting the said *James W.* by your servants, at the suit of any persons not being filazers, attornies, clerks or officers of some of our courts, (except before excepted) or from proceeding in any plaint in our court before you, or either of you, against him levied or to be levied by whomsoever not being so as aforesaid privileged; and if you, or either of you, have taken the said *James W.* before the receipt of this writ, against the custom, liberty and privilege aforesaid, that then you, and each of you, immediately discharge him from that arrest, telling the plaintiffs in those pleas and plaints from us, that they file their bills in their pleas aforesaid, according to the custom of our said court for time immemorial used and approved in the same, against the said *James W.* in our said court before us, to obtain justice there, if they shall think fit. Witnesses *T. Parker*, knt. at Westminster 13th day of February in the second year of our reign.

Holt. Ventris.
Woodhouse propr^s.

ANNE, &c. To the judges of our court of our palace, and every of them, greeting: whereas as well by reason of our royal dignity as by an antient custom, according to the same for times past used and approved hitherto, it hath obtained, that all and every our attornies assigned to inrol pleas in our court before us elsewhere than in our same court before us ought not, nor for all the time aforesaid have been accustomed to be drawn or compelled to answer before any secular judges on any pleas or plaints: and now on the behalf of *Thomas H.* gent. being one of the attornies of our court before us, we have understood, that notwithstanding the dignity and custom aforesaid, some evil disposed persons the dignity and custom aforesaid lightly regarding, the said *Thomas H.* in our court before you, on pretence of divers plaints before you against the said *Thomas* levied, have drawn in plea, to the manifest detriment and diminution of our dignity

[627]

Writ of privilege for an attorney of K. B. directed to the palace court.

Select Writs.

dignity and the custom aforesaid, and the no small prejudice and grievance of the same *Thomas H.* which if it should be permitted, would for the future be a very bad example to others; therefore we command and firmly injoin you. that you wholly desist from proceeding further before you or any of you in the complaints aforesaid, or any of them, telling the parties in the same complaints before you in form aforesaid prosecuting, that they may come to our court before us to obtain justice therein there against the said *Thomas H.* if they will. Witness *Thomas Parker*, knt. at *Westminster* the 25th day of *June* in the 12th year of our reign.

Holt. Ventris.

[628]

Procedendo.

A procedendo on a *habeas corpus* to the constable of the honour and castle of *Windfor*.

WILLIAM, &c. To the most noble *George* duke of *Northumberland*, knight of the most honourable order of the garter, constable of our honour and castle of *Windfor* in the county of *Berks*, and keeper of the forest of the same, or his lieutenant or deputy there, greeting: altho' by our writ we lately commanded, that the body of *Henry B.* in our prison under your custody, as it is said, detained, under a safe and secure conduct, together with the day and cause of his caption and detention, by whatever name the same *Henry* might be called in the same, you should have before us at *Westminster* on *Wednesday* next after the octave of *St. Martin* last past, to do and receive all and singular those things which our same court before us should then and there consider concerning him in that behalf: nevertheless for certain reasons us now in our court before us especially moving, we command you, that in whatever complaints against him the said *Henry B.* at the suit of *Elizabeth M.* widow, in our court before you, or any of you, levied or affirmed, and before you now depending undetermined, with what speed you can you proceed in such manner as according to the law and custom of this our kingdom of *England* you shall see fit to proceed; our writ of *habeas corpus* aforesaid to you before to the contrary thereof directed in any wise notwithstanding. Witness *J. Holt*, knt. at *Westminster* 12th day of *February* in the 13th year of our reign.

A procedendo on a *habeas corpus*.

WILLIAM and Mary, &c. To the mayor, aldermen and sheriffs of the city of *London*, greeting: altho' we lately by our writ commanded you, that you should have the body of *Robert W.* in our prison under your custody, as it was said, detained, under a safe and secure conduct, together with the day and cause of his caption and detention, by what name
foever

soever the said *Robert* might be called in the same, before *John Holt*, knt. our chief justice assigned to hold pleas in our court before us, at his chambers situate in *Serjeant's-Inn* in *Chancery-lane*, *London*, immediately after the receipt of that writ, to do and receive all and singular those things which our same chief justice should then and there consider concerning him in that behalf: nevertheless for certain reasons us now in our court before us especially moving, we command you, and every of you, that in whatever complaints or suits against him the said *Robert W.* at the suit of *Francis M.* in our court before you, or any of you, levied or affirmed, and before you, or any of you, now depending undetermined, with what speed you can you proceed in such manner as according to the law and custom of our kingdom of *England*, or of our city of *London* aforesaid, you shall see fit to proceed; our writ of *habeas corpus* aforesaid to you before directed to the contrary thereof in any wise notwithstanding. Witness, &c.

WILLIAM, &c. To the mayor, aldermen and sheriffs of *London*, greeting: whereas we by our writ being willing for certain reasons to be certified as well of a certain original bill or plaint in our court, before you or some of you, levied or affirmed against the royal *African* company of *England*, at the suit of *William W.* in a plea of debt as of all sequestrations and attachments thereon made of the money, goods or chattels of the said royal *African* company of *England*, lately commanded you and every of you, that the original bill and plaint aforesaid, and the sequestrations and attachments aforesaid, with all things touching them, as fully and intirely as in our court before you or any of you they remained, before our trusty and beloved *John Holt*, knt. our chief justice assigned to hold pleas in our court before us at his chambers, situate in *Serjeants-Inn* in *Chancery-lane*, *London*, immediately after the receipt of that writ you should send, that our same chief justice might cause to be done in that behalf what of right he should see proper to be done: nevertheless for certain reasons us now in our court before us especially moving, we command you and every of you, that as well in the original bill or plaint aforesaid in our said court before you, or some of you, levied or affirmed against the said royal *African* company of *England*, at the suit of the said *William W.* in the plea aforesaid, as in all sequestrations and attachments thereon made of the money, goods and chattels of the said royal *African* company of *England* with what speed you can, you proceed in such manner as according to the law and custom of our city of *London*, you shall see proper to proceed; our writ of *certiorari* aforesaid to you before to the contrary thereof directed in any wise notwithstanding. Witness, &c.

[629]

A *procedendo* on a writ of *certiorari* directed to the mayor, aldermen, &c. of *London*.

Prohibition.

A prohibition
to the spiritual
court for the
words *vulere*,
and have got
the pox.

A N N E, &c. To the reverend and excellent man *Henry N.* doctor of laws of the consistory court, *London*, official principal lawfully constituted, or to your surrogate or other judge in this behalf competent whatever, greeting: it is shewn to us in our court before our justices at *Westminster*, by *Francis P.* on the behalf of *Mary P.* the wife of the said *Francis P.* that whereas all and all manner of pleas of trespass on the case within this kingdom of *England* arising and happening, to the lady the now queen, and to her royal crown, and to the court of the said lady the queen, according to the laws and customs of this kingdom do belong and appertain; nevertheless one *Elizabeth H.* wife of *Thomas H.* an inhabitant of the parish of *Ealing*, otherwise *Yealing*, in the county of *Middlesex* and diocese of *London* aforesaid, not ignorant of the premises, but contriving the said *Mary* unjustly to aggrieve and oppress her the said *Mary* (being likewise an inhabitant within the parish aforesaid in the county aforesaid) to another proof in the court christian before you the said *Henry N.* doctor of laws of the consistory court of *London*, official principal lawfully constituted, contrary to the due form of the law of this kingdom of *England*, and against the custom aforesaid, for a certain cause of a supposed contempt, scandal and disgrace of the said *Elizabeth H.* hath unjustly drawn in plea to answer to certain articles by the said *Elizabeth* in the same court christian against her the said *Mary*, in the premises exhibited and promoted, cautiously and subtilly there articulating and objecting that the said *Mary* in the months of *March*, *April* and *May* in the year 1703, within the said parish of *Ealing*, otherwise *Yealing*, in the county of *Middlesex*, and other parishes and publick places to the same neighbourhood adjoining, the same *Elizabeth* wickedly and maliciously defamed, and some defamatory words, to the infamy and diminution of the estate, name, and good reputation of the said *Elizabeth* tending, and particularly these *English* words following, or others in effect like them, and importing the same sense, to wit, you (meaning the said *Elizabeth*) are a whore and have got the pox, and it has eat the teeth out of your head; and you (again meaning the said *Elizabeth*) have given it to your husband, openly and publicly said, uttered, pronounced and published, and her the said *Mary* in the said court christian before you the said judge spiritual, of and upon the premises to appear, hath unjustly obliged, and the same *Mary* thereupon there to answer, and in the premises to cause to be condemned with all her power endeavours and daily contrives, in contempt of us, and against the laws and customs of this kingdom of *England*, and to the manifest damage, prejudice and grievance of her the said *Mary*; wherefore the same

Francis

Francis for the said *Mary* most humbly imploring the aid of our court of the bench hath prayed relief, and our writ of prohibition to you and every of you to be directed, to prohibit you and every of you, that you no further hold the plea aforesaid, the premisses aforesaid in any wise touching, before you or any of you, nor any thing in the court christian, attempt nor procure to be done, which may be in any wise to the prejudice of the said *Mary*, or in contempt of us and our law, lest you should incur the punishment of the violators of our law; and also the sentence or judgment, if any, against the said *Mary* on that account you have given or pronounced, or any of you have given or pronounced, then do you and every of you, without delay, release the said *Mary* therefrom, and her from hence wholly absolve at your peril. Witness *T. Trevor, &c.*

A N N E, &c. To the reverend *George B.* doctor of laws, surrogate to the reverend *Peter M.* batchelor of laws, vicar general in spirituals of *Peter* by divine permission lord bishop of *Winchester*, and of his consistorial episcopal court of *Winchester* official principal lawfully constituted, or to his deputy or other judge in this behalf competent, greeting: whereas *Henry P.* of the parish of the holy *Trinity* in *Guildford* in the county of *Surry*, draper, lately in our court before us at *Westminster* came and gave our same court to understand and be informed, that whereas all and singular (*and so on with the suggestion by way of recital to:*) nevertheless you the said *George B.* surrogate of the said *Peter M.* vicar general in spirituals of *Peter* bishop of *Winchester*, and of his consistorial episcopal court of *Winchester* official principal, well knowing the premisses, yet contriving (*and so on till you come to the word relief, and then say*) we therefore being willing, as we are by our oath bound, that the rights of our royal crown and the laws and customs of this our kingdom of *England* should be observed, and our liege subjects in no wise oppressed, prohibit and firmly injoin you, and every of you, that you, or any of you, do not hold plea touching or in any manner concerning the premisses before you, or any of you, nor attempt or presume to attempt any thing therein; and if you have pronounced any sentence of excommunication against him the said *Henry P.* by reason of the premisses, then without delay revoke, or cause it to be revoked, and him the said *Henry P.* from thence wholly absolve and release at your peril. Witness *J. Holt, knt. &c.*

[631]
Prohibition to
the surrogate of
the spiritual
court.

Recordari facias loquelam.

A recordari
facias loquelam
in the county-
court of the
sheriff of *Sussex*,
returnable in
C. B.

G E O R G E, &c. To the sheriff of *Sussex*, greeting: we command you, that in your full county you cause to be recorded the plaint which is in the same county without our writ between *Robert B.* and *Benjamin B.* of a certain trespass on the case, to the same *Robert* by the said *Benjamin* done, as it is said; and have that record before our justices at *Westminster* from the day of *St. Martin* in 15 days under your seal and the seals of four lawful knights of the same county of those who were present at that record, and appoint the same day to the parties that they be then there to proceed in that plaint, as it shall be just; and have there the names of the said four knights, and this writ. Witness ourself at *Westminster* 22d day of *October* in the fourth year of our reign. Because the said *Benjamin* by reason of the favour which the said *Robert* hath in the court aforesaid cannot obtain justice there, as it is said, let there be execution of this writ, if the cause is true; and the said *Benjamin* desires it, and otherwise not.

The return
thereof.

The execution of this writ to me directed in my full county held at *Lewes* by adjournment 31st day of *October* in the fourth year of the reign of the king within written, I have caused to be recorded the plaint whereof mention is within made; which said plaint appears in a certain schedule to this writ annexed; and that record I have before the justices within written at the day and place within contained under my seal and the seals of *Henry B. Oliver W. John N.* and *John N.* the younger, four good and lawful men of the same county of those who were present at that record; and I have appointed the day within written to the parties that they be then there to proceed in that plaint, as it shall be just, as I am within commanded.

The residue of the execution of this writ appears in a certain schedule to this writ annexed.

John Watson, esq; sheriff.

Sussex, to wit, *Lewes* } At the fifth court of my county held at
county-court. } *Lewes* for the county aforesaid by adjournment 31st day of *October* in the fourth year of the reign of our lord *George*, now king of *Great Britain*, &c. and in the year of the Lord 1717, before *Nicholas Stent*, *William Read* and others, suitors of the court aforesaid, among other things it is thus contained.

Robert

Robert Bonner complains against *Benjamin Baker* in a plea of trespass on the case.

Pledges to prosecute, { *John Doe*,
and
Richard Roe.

John Watson, esq; sheriff.

ANNE, &c. To the sheriff of *Sussex*, greeting: we command you, that in your full county you cause to be recorded the plaint which is in the same county, without our writ, between *Luke L.* and *John A.* in a plea of trespass on the case, to the same *Luke* by the said *John* done, as it is said; and have that record before us from the day of *Easter* in 15 days, where-soever we shall then be in *England*, under your seal and the seals of four lawful knights of the same county of those who were present at that record, and appoint the same day to the parties that they be then there to proceed in that plaint, as it shall be just; and have there the names of the said four knights, and this writ. Witness ourself at *Westminster* 13th day of *March* in the 10th year of our reign. Because the said *John*, by reason of the favour which the said *Luke* hath in the county aforesaid, cannot obtain justice there, as it is said, let there be execution of this writ, if the cause is true, and the said *John* desires it, otherwise not. By the lord keeper of the great seal of *Great Britain* at the instance of the defendant. By virtue of this writ to me directed, at my full county held at *Lewes* in the county aforesaid in and for the same county 22d day of *March* in the 10th year of the reign of the lady *Anne*, now queen of *Great Britain*, &c. I have caused to be recorded the plaint, whereof mention is above made, which appears in the schedule to this writ annexed; and I have that record before the said lady the queen at the day and place in the writ aforesaid contained under my seal and the seals of *Richard V. Thomas E. Richard B.* and *James L.* four good and lawful knights of the same county of those who were present at that record; and I have appointed the same day to the parties aforesaid, that they be then there to proceed in that plea as it shall be just, as in the writ aforesaid I am commanded: the residue of the execution of this writ appears in a certain schedule to the same annexed.

Hugh Reason, esq; sheriff.

[633]

The like re-
turnable in
K. B.

Sussex, *Lewes* county-
court, to wit.

} At the court of *William K.* esq; sheriff
of the county aforesaid, held at *Lewes*
15th day of *June* in the 9th year of the
reign of our lady *Anne*, by the grace of
God, of *Great Britain*, &c. before *Thomas J. gent. Thomas T. the younger*,
and *William S.* suitors of the same
court,

court, among other things it is contained thus.

Sussex, Lewes county- } *Luke L.* complains against *John A.* in a
court, to wit. } plea of trespass on the case, &c. recorded between the parties at the court held for the county aforesaid at *Lewes* 22d day of *March* in the 10th year of the reign of our lady *Anne*, now queen of *Great Britain*, &c.

[634]

Restitution & superseedeas.

Restitution and
superseedeas after
 outlawry reversed.

WILLIAM, &c. To our constable of our castle of *Dover*, or his lieutenant or deputy, greeting: because in the record and proceedings, and also in the promulgation of the outlawry against *Edward S.* late of *Dackle* in the county of *Kent*, at the suit of *Ralph* earl of *Mountague* in a plea of trespass on the case, in our hustings of *London* pronounced, and before us wheresoever, &c. lately returned and filed, a manifest error hath happened, to the great damage of him the said *Edward*, as by the inspection of the record and proceedings thereof in our court before us remaining appears to us on record; and we for sundry errors in the record and proceedings aforesaid in our court before us found have reversed and intirely annulled the outlawry aforesaid: and it is farther considered, that the said *Edward* be restored to the common law of our kingdom of *England*, and to all things that he hath lost by reason of the outlawry aforesaid: therefore we command you, and every of you, that you wholly desist from taking the body of the said *Edward S.* or seizing into our hands any goods or chattels of the same *Edward* by reason of the outlawry aforesaid; and if he is detained in our prison on that account, and no other, then cause him to be delivered out of the prison wherein he is so detained, without delay, at your peril: we likewise command you, that if you, or any of you, have taken or seized any goods or chattels of the same *Edward* into our hands by reason of the outlawry aforesaid, and none other, then without delay cause them to be delivered to the same *Edward* likewise, at your peril.

Otherwise.

ANNE, &c. To the sheriff of *Middlesex*, greeting: whereas the late sheriffs of *London* were by our writ commanded, that they should cause to be called *John G.* late of, &c. (so go on reciting the exigent and the return thereof) as by the inspection of the record and proceedings aforesaid remaining in our

our court before us manifeſtly appears: and becauſe no writ of proclamation, according to the form of the ſtatute in ſuch caſe made and provided, iſſued againſt the ſaid *John* in the plea aforeſaid, the outlawry aforeſaid in form aforeſaid againſt the ſaid *John* pronounced and had is intirely void, and of no force and effect in law; and we for this reaſon the record and proceedings aforeſaid of the outlawry aforeſaid have reverſed and intirely annulled: and we have farther conſidered, that the ſaid *John G.* be reſtored to the common law of our kingdom of *England*, and to all things that he hath loſt by reaſon of the outlawry aforeſaid: and now on the behalf of the ſaid *John G.* we have in our court before us underſtood, that you by virtue of our writ to you therefore directed, ſundry cattle, goods and chattels of the ſaid *John G.* into our hands by reaſon of the outlawry aforeſaid have taken and ſeized, and them in your cuſtody yet detain, to the great damage of him the ſaid *John*; wherefore the ſame *John* hath implored us to grant him his proper remedy in this behalf: and we being unwilling that the ſaid *John* ſhould be injured in this behalf, command you, that you without delay deliver and make to the ſame *John* full reſtitution of all the cattle, goods and chattels of him the ſaid *John* by you ſo taken as aforeſaid; and this by no means omit, at your peril. Witneſs, &c.

Deane.

Reſtitution.

[635]

WILLIAM, &c. To the ſheriff of *Kent*, greeting: whereas by our writ reciting, that whereas *Henry W.* had lately in our court before us at *Weſtminſter* by bill, without our writ, and by the judgment of the ſame court recovered againſt *Margaret O.* widow, his term then to come of and in fix meſſuages, one mill, eight barns, eight gardens, 150 acres of land, 50 acres of meadow, 150 acres of paſture, and 50 acres of wood, with the appurtenances, ſituate, lying and being in the pariſhes of *Linton, Hunton, Hedcorne, Ulcombe, Eaſt Sutton, Smarden, Boxley, Thurnham, Maidſtone, Eaſt Farley* and *Looſe* in your county, which one *Edward O.* on the firſt day of *September* in the ſixth year of our reign, and of the late queen *Mary*, at *Maidſtone* in your county, had demised, granted, and to farm let to the ſaid *Henry*, to hold to the ſaid *Henry* for a term of years which is not yet paſt, to wit, from the 30th day of *Auguſt* then laſt paſt, until the full end and term of five years from thence next enſuing, fully to be compleat and ended; by virtue of which ſaid demise the ſame *Henry* into the tenements aforeſaid, with the appurtenances entred, and was thereof poſſeſſed, until the ſaid *Martha* afterwards in and upon the poſſeſſion of him the ſaid *Henry* thereof entred, and him the ſaid *Henry* from his farm

F f 4

aforeſaid,

A writ of reſtitution of poſſeſſion becauſe the writ of *habere facias poſſeſſionem* iſſued erroneouſly.

aforesaid, his term aforesaid therein not yet ended, ejected, expelled and removed, we lately commanded you that you should cause the said *Henry* to have his possession of his term aforesaid yet to come, of and in the tenements aforesaid, with the appurtenances; and how you should execute that our writ you should certify to us at *Westminster* on *Monday* next after the octave of the purification of the blessed virgin *Mary*; by virtue of which said writ you the sheriff of the county of *Kent* caused the said *Henry* to have possession of his term aforesaid yet to come, of and in the messuages, mill, lands and tenements aforesaid, with the appurtenances, as by the return thereof appears to us: and because that writ did wrongfully, unadvisedly and erroneously issue out of our said court before us, therefore we command you that you, without delay, restore to the said *Martha* her full possession of and in the messuages, mill, lands, tenements and hereditaments aforesaid from the said *Martha*, by virtue of the writ aforesaid, as aforesaid unjustly taken; and how you shall execute this our writ certify to us at *Westminster* on *Wednesday* next after 15 days of *Easter*, returning to us this our writ. Witness, &c.

[636]

Retorn' habend'.

Retorn' habend'
after judgment
for the defend-
ant on a demur-
ser in replevin.

ANNE, &c. To the sheriff of *Middlesex*, greeting:
whereas *J. S.* late of the parish of *St. Clement Danes* in your county, esq; was summoned to be in our court before us at *Westminster* to answer *William P.* esq; in a plea, why on the 14th day of *October* in the first year of our reign, at the parish of *St. Clement Danes* in your county, in a certain place there, called a chamber in *Devereux Court*, he took the goods and chattels of him the said *William*, to wit, one bed, one bedstead, one bolster, one pillow, four curtains vallance, two blankets, one quilt, a chest of drawers, 30 books, one looking-glass, one large brush, one large trunk and four chairs, and unjustly detained them, against surety and pledges, until, &c. And the same *J. S.* came into our court before us and alledged and said, that the said *William* ought not to have or maintain his action aforesaid thereof against him, because as to the said one bed, one bedstead, one bolster, one pillow, four curtains vallance, two blankets, one quilt, a chest of drawers, 20 books of the books aforesaid, parcel of the goods and chattels aforesaid in the declaration aforesaid mentioned, the same *John* said, that the property of those goods and chattels at the said time of the taking of them was in the said *John*; without that, that the property of those goods and chattels was in the said *W.* as by the declaration aforesaid was above supposed: and this he was ready to verify, and

and as to the said chest of drawers, ten other books, one large brush, one large trunk and four chairs, the residue of the goods and chattels aforesaid in the declaration aforesaid mentioned, the said *John* said, that at the time of the taking of the residue of those goods and chattels last mentioned, the property of the same goods and chattels was in one *P. F.* without that, that the property of the residue of those goods and chattels at the said time when, &c. was in the said *William*, as by the declaration aforesaid was above supposed: and this he was ready to verify and prove: wherefore he prayed judgment if the said *William* ought to have or maintain his action aforesaid thereof against him, &c. He also prayed a return of all and singular the goods and chattels aforesaid, together with his damages, costs and charges by him about his suit in that behalf expended, to be adjudged to him, &c. And the said *William* said, that the plea aforesaid of the said *John* above pleaded, and the matter in the same contained, was insufficient in law to preclude him the said *William* from having his action aforesaid against the said *John*; and that he to that plea in manner and form aforesaid pleaded had no necessity, nor was by the law of the land obliged in any manner to answer: and this he was ready to verify: wherefore for want of a sufficient answer in this behalf, he the same *William* prayed judgment and his damages, by reason of the caption and unjust detention of the goods and chattels aforesaid, to be adjudged to him, &c. And the said *John* said, that the plea aforesaid by him the said *John* in manner and form aforesaid pleaded, and the matter in the same contained, was good and sufficient in law to preclude the said *William* from having his action aforesaid thereof against him the said *John*; which said plea, and the matter in the same contained, he the said *John* was ready to verify and prove, as the court, &c. And because the said *William* did not answer to that plea, nor hitherto in any wise deny it, he the said *John* as before prayed judgment, and a return of all and singular the goods and chattels aforesaid, together with his damages, &c. to be adjudged to him, &c. And it was in such manner thereon proceeded in our same court before us that it was considered, that the plea aforesaid by him the said *John* above pleaded, and the matter in the same contained, was good and sufficient in law to preclude the said *William* from having his action aforesaid thereof against him the said *John*: it was also considered, that the said *W. P.* should take nothing by his writ aforesaid, but for his false claim thereof should be in mercy, &c. and that the said *J. S.* should go thereof without day, &c. and that he should have a return of the goods and chattels aforesaid to hold to him irreplegiable for ever: and it was further considered, that the said *John* ought to recover his damages against the said *William* by reason of the premisses, &c. Therefore we command you that you without delay cause the said *John* to have a return of the goods and chattels aforesaid irreplegiable, and do not deliver them on the complaint of the said *William*,

[637]

William, without our writ, which expressly mentions the judgment aforesaid; and how you shall execute this our writ certify to us on the octave of *St. Hilary*, wheresoever, &c. We likewise command you, that by the oath of 12 good and lawful men of your bailiwick, according to the form of the statute in such case thereof lately made and provided, you diligently inquire what damages the same *John* hath sustained, as well by reason of the premisses as for his costs and charges by him about his suit in this behalf expended; and the inquisition which you shall take thereof send to us on the said day, wheresoever, &c. under your seal, and the seals of those by whose oath you shall take that inquisition, together with our writ to you therefore directed. Witness *J. Holt*, knt. at *Westminster* the 29th day of *November* in the second year of our reign.

Retorn' habend'
on a judgment
by default.

A N N E, &c. To the sheriff of *Sussex*, greeting: whereas *Thomas E.* lately in our court before us at *Westminster*, was summoned to answer *Robert B.* in a plea, why he took seven cows, the cattle of him the said *Robert*, and unjustly detained them against surety and pledges, as it is said; and the same *Robert* afterwards in our same court before us made default; wherefore it was considered in our same court before us, that he and his pledges to prosecute should be in mercy, and that the said *Thomas* should go thereof with day, and that he should have a return of the cattle aforesaid: therefore we command you, that you without delay cause the cattle aforesaid to be returned to the said *Thomas*, and do not deliver them on the complaint of the said *Robert* without our writ, which makes express mention of the judgment aforesaid; and how you shall execute this our writ certify to us from the day of wheresoever we shall then be in *Great Britain*; and have there this writ. Witness *John Holt*, knt. &c.

Scire facias by
an executor on a
judgment in
K. B. affirmed
in the exchequer
chamber in the
time of the
testator.

G E O R G E, &c. To the sheriffs of *London*, greeting: whereas *Joshua H.* lately in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, recovered against *William H.* 44 l. for his damages which he sustained as well by reason of the non-performance of certain promises and assumptions of him the said *William* by him the said *William* to the same *Joshua* lately made, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as it appears to us on record, and also 10 l. adjudged to the same *Joshua* in our exchequer chamber, according to the form of the statute thereof lately made and provided, for his

his damages, costs and charges which he had by reason of the delay of execution of the judgment aforefaid, on pretence of prosecuting our certain writ of error by the faid *William* against the faid *Josbua* in our exchequer chamber aforefaid, before our justices of the bench and the barons of our exchequer of the degree of the coif, according to the form of the statute in such case thereof lately made and provided, prosecuted: and afterwards the faid *Josbua*, at *London* aforefaid in the parish of *St. Mary le Bow* in the ward of *Cheape*, made his last will and testament in writing, and by the same will constituted and ordained *Gilbert H.* and *Josbua H.* the son of him the faid *Josbua H.* the father, executors thereof, and afterwards there died; after whose death the faid *Gilbert* and *Josbua H.* the son took upon themselves the burden of the execution of that will, and that will in due form of law proved: and now on the behalf of the faid *Gilbert*, and *Josbua* the son, in our court before us we have understood, that altho' judgment thereof is given, yet execution of that judgment still remains to be made; wherefore the same *Gilbert* and *Josbua* the executors have implored us to grant them their proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the faid *William* that he be before us at *Westminster* on day next after to shew if he hath or can say any thing for himself why the faid *Gilbert* and *Josbua* the executors ought not to have their execution for the damages, costs and charges aforefaid, according to the force, form and effect of the recovery aforefaid, if he shall think fit, and farther to do and receive what our court before us shall then and there consider concerning him in this behalf; and have there then the names of those by whom you shall give him notice, and this writ. Witnesses, &c.

WILLIAM, &c. To the sheriffs of *London*, greeting: whereas in the record and proceedings, and also in the rendition of the judgment of a plea which was in the court of the lord *James* the Second, late king of *England*, &c. before the late king himself, by bill, between *William G.* and *Love* his wife, administratrix of the goods and chattels which belonged to *Christopher C.* at the time of his death, who, as it is said, died intestate, and *Edward T.* knt. otherwise called *Edward T.* knt. of the parish of *St. Martin in the Fields* in the county of *Middlesex*, in a plea that the same *Edward* do render to the faid *William* and the administratrix 500 l. as it is said, a manifest error hath happened; to the great damage of him the faid *Edward*, as by his complaint we have understood; the record and proceedings of which said judgment before our justices of the common bench and the barons of the exchequer who are of the degree of the coif, to correct error in the same, according to the form of the statute of the 27th year of the lady *Elizabeth*, late queen of *England*, &c. thereof provided, we caused to be brought into our exchequer

Scire facias for an administratrix to hear errors in the exchequer chamber where her husband died after the judgment recovered.

exchequer chamber: and whereas after the judgment aforesaid was obtained, the said *William* at *London* in the parish of *St. Mary le Bow* in the ward of *Cheape* died, and the said *Love* survived him: therefore we command you, as we have before commanded you, that by good and lawful men of your bailiwick you give notice to the said *Love*, that she be before our justices of the common bench and the barons of our exchequer aforesaid in our exchequer chamber aforesaid on *Saturday* the 4th day of *May* next ensuing, to hear the record and proceedings aforesaid, if she shall think fit, and farther to do and receive what our same justices and barons shall then and there consider in this behalf; and have there the names of those by whom you shall give her notice, and this writ. Witness *George Treby*, knt. at *Westminster* 13th day of *April* in the 7th year of our reign.

Wearg.

Scire facias in debt for an executrix against an executrix on a judgment recovered by the testator in a former king's reign.

A N N E, &c. To the sheriffs of *London*, greeting: whereas *T. R.* esq; lately in the court of the lord and lady *William* and *Mary*, late king and queen of *England*, &c. before the late king and queen themselves at *Westminster*, by bill, without the writ of the same late king and queen, and by the judgment of the same court, recovered against *Richard G.* bart. viscount *Preston* within the kingdom of *Scotland*, otherwise called, &c. 5200 *l.* debt, and 13 *l.* 13 *s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Richard* is convicted, as it appears to us on record: and afterwards the said *Thomas R.* at *London* in the parish of *St. Mary le Bow* in the ward of *Cheape*, made his last will and testament in writing, and by the same constituted *Mary R.* sole executrix thereof, and afterwards there died, the same *Thomas R.* not being satisfied the debt and damages aforesaid: and afterwards the said *Richard* at *London* in the parish of *St. Mary le Bow* in the ward of *Cheape* made his last will and testament in writing, and by the same constituted the lady *Anne G.* widow, his wife, executrix thereof, and afterwards there died: and now on the behalf of the said *Mary R.* we have in our court before us understood, that altho' the judgment aforesaid is given, nevertheless execution of that judgment yet remains to be made for her; wherefore the same *Mary* hath besought us to grant her her proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *Anne G.* that she be before us at *Westminster* on day next after to shew, if she hath or can say any thing for herself, why the said *Mary R.* ought not to have her execution against her for the debt and damages aforesaid, of the goods and chattels which belonged to the said *Richard G.* at the time of his death in her hands to be administered, according to the force, form and effect of the recovery aforesaid, if she shall think fit, and

and farther to do and receive what our court before us shall then and there consider concerning her in this behalf; and have there then the names of those by whom you shall give her notice, and this writ. Witness, &c.

WILLIAM, &c. To the sheriffs of *London*, greeting : *Scire facias on judgment in debt.*
 whereas *John C.* lately in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, recovered against *Thomas H.* of the *Middle Temple, London*, esq; 407*l.* debt, and also 70*s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Thomas* is convicted, as it appears to us on record : and now on the behalf of the said *John* we have in our court before us understood, that altho' the judgment thereof is given, yet execution for the debt and damages aforesaid still remains to be made for him ; wherefore the same *John* hath implored us to grant him his proper remedy in this behalf : and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *Thomas* that he be before us at *Westminster* on day next after to shew if he hath or can say any thing for himself why the said *John* ought not to have his execution against him for the debt and damages aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our same court before us shall then and there consider concerning him in this behalf ; and have there then the names of those by whom you shall give him notice, and this writ. Witness, &c.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting : *[640]*
 ing : whereas *Elizabeth J.* widow, executrix of the last will and testament of *Edward J.* her late husband, deceased, lately in our court, and of the lady *Mary* our late queen at *Westminster* by bill, without our writ, and of our said late queen, and by the judgment of the same court recovered against *John T.* otherwise called, &c. 400*l.* debt, and 23*s.* for her damages, which she sustained, as well by reason of the detention of that debt as for her costs and charges by her about her suit in that behalf expended ; whereof the same *John* is convicted, as it appears to us on record : and now on the behalf of the said *Elizabeth*, we have in our court before us understood, that although judgment thereof is given, execution nevertheless for the debt and damages aforesaid yet remains to be made for her ; wherefore the same *Elizabeth* hath besought us to grant her her proper remedy in this behalf : and we being willing that what is just in this behalf should be done, command you that by good and lawful men of your bailiwick you give notice to the said *John* that he be before us at *Westminster* on *Wednesday* next after 15 days of *Easter*,
Scire facias in debt for an executrix.

exchequer chamber: and whereas after the judgment aforesaid was obtained, the said *William* at *London* in the parish of *St. Mary le Bow* in the ward of *Cheape* died, and the said *Love* survived him: therefore we command you, as we have before commanded you, that by good and lawful men of your bailiwick you give notice to the said *Love*, that she be before our justices of the common bench and the barons of our exchequer aforesaid in our exchequer chamber aforesaid on *Saturday* the 4th day of *May* next ensuing, to hear the record and proceedings aforesaid, if she shall think fit, and farther to do and receive what our same justices and barons shall then and there consider in this behalf; and have there the names of those by whom you shall give her notice, and this writ. Witness *George Treby*, knt. at *Westminster* 13th day of *April* in the 7th year of our reign.

Weary.

Scire facias in debt for an executrix against an executrix on a judgment recovered by the testator in a former king's reign.

A N N E, &c. To the sheriffs of *London*, greeting: whereas *T. R.* esq; lately in the court of the lord and lady *William* and *Mary*, late king and queen of *England*, &c. before the late king and queen themselves at *Westminster*, by bill, without the writ of the same late king and queen, and by the judgment of the same court, recovered against *Richard G.* bart. viscount *Preston* within the kingdom of *Scotland*, otherwise called, &c. 5200 *l.* debt, and 13 *l.* 13 *s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Richard* is convicted, as it appears to us on record: and afterwards the said *Thomas R.* at *London* in the parish of *St. Mary le Bow* in the ward of *Cheape*, made his last will and testament in writing, and by the same constituted *Mary R.* sole executrix thereof, and afterwards there died, the same *Thomas R.* not being satisfied the debt and damages aforesaid: and afterwards the said *Richard* at *London* in the parish of *St. Mary le Bow* in the ward of *Cheape* made his last will and testament in writing, and by the same constituted the lady *Anne G.* widow, his wife, executrix thereof, and afterwards there died: and now on the behalf of the said *Mary R.* we have in our court before us understood, that altho' the judgment aforesaid is given, nevertheless execution of that judgment yet remains to be made for her; wherefore the same *Mary* hath besought us to grant her her proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *Anne G.* that she be before us at *Westminster* on day next after to shew, if she hath or can say any thing for herself, why the said *Mary R.* ought not to have her execution against her for the debt and damages aforesaid, of the goods and chattels which belonged to the said *Richard G.* at the time of his death in her hands to be administrated, according to the force, form and effect of the recovery aforesaid, if she shall think fit, and

and farther to do and receive what our court before us shall then and there consider concerning her in this behalf; and have there then the names of those by whom you shall give her notice, and this writ. Witnefs, &c.

WILLIAM, &c. To the sheriffs of *London*, greeting : *Scire facias on judgment in debt.*
 whereas *John C.* lately in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, recovered against *Thomas H.* of the *Middle Temple, London*, esq; 407 *l.* debt, and also 70 *s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Thomas* is convicted, as it appears to us on record : and now on the behalf of the said *John* we have in our court before us understood, that altho' the judgment thereof is given, yet execution for the debt and damages aforesaid still remains to be made for him ; wherefore the same *John* hath implored us to grant him his proper remedy in this behalf : and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *Thomas* that he be before us at *Westminster* on _____ day next after _____ to shew if he hath or can say any thing for himself why the said *John* ought not to have his execution against him for the debt and damages aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our same court before us shall then and there consider concerning him in this behalf ; and have there then the names of those by whom you shall give him notice, and this writ. Witnefs, &c.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting : [640]
 ing : whereas *Elizabeth J.* widow, executrix of the last will and testament of *Edward J.* her late husband, deceased, lately in our court, and of the lady *Mary* our late queen at *Westminster* by bill, without our writ, and of our said late queen, and by the judgment of the same court recovered against *John T.* otherwise called, &c. 400 *l.* debt, and 23 *s.* for her damages, which she sustained, as well by reason of the detention of that debt as for her costs and charges by her about her suit in that behalf expended ; whereof the same *John* is convicted, as it appears to us on record : and now on the behalf of the said *Elizabeth*, we have in our court before us understood, that although judgment thereof is given, execution nevertheless for the debt and damages aforesaid yet remains to be made for her ; wherefore the same *Elizabeth* hath besought us to grant her her proper remedy in this behalf : and we being willing that what is just in this behalf should be done, command you that by good and lawful men of your bailiwick you give notice to the said *John* that he be before us at *Westminster* on *Wednesday* next after 15 days of *Easter*,
Scire facias in debt for an executrix.

Easter, to shew if he hath or can say any thing for himself why the said *Elizabeth* ought not to have her execution against him for the debt and damages aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit; and further to do and receive what our same court before us shall then and there consider concerning him in this behalf; and have there then the names of those by whom you shall give him notice, and this writ. Witness, &c.

Scire facias
against an ad-
ministrators in
case.

ANNE, &c. To the sheriff of *Middlesex*, greeting: whereas *Robert S.* lately in our court before us at *Westminster* by bill, without our writ, and by the judgment of the same court recovered against *John H.* 50 l. for his damages which he sustained, as well by reason of the non-performance of certain promises and assumptions by him the said *John* to the said *Robert* made, as for his costs and charges by him about his suit in that behalf expended, whereof the same *John* is convicted, as it appears to us on record: and now on the behalf of the said *Robert* in our court before us, we have understood, that although judgment thereof is given, execution nevertheless of that judgment yet remains to be made for him; and the said *John* is dead, and died intestate, and that administration of all and singular the goods and chattels, rights and credits which belonged to the said *John* at the time of his death, was, after his death, at *Westminster* in your county, in due form of law committed to *Mary H.* the widow and relict of him the said *John*, as we have likewise by the suggestion of the said *Robert* in our court before us understood: wherefore the same *Robert* hath besought us to grant him his proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your county you give notice to the said *Mary* that she be before us at *Westminster* on *Saturday* next after the octave of the holy *Trinity*, to shew, if she hath or can say any thing for herself, why the said *Robert* ought not to have his execution against her for the damages, costs and charges aforesaid, of the goods and chattels which belonged to the said *John* at the time of his death in her hands to be administered according to the force, form and effect of the recovery aforesaid, if she shall think fit; and further, to do and receive what our same court before us shall then and there consider concerning her in this behalf; and have there then the names of those by whom you shall give her notice, and this writ. Witness, &c.

Scire facias quare
executionem non
in debt on a
judgment re-
moved out of
the common
pleas by writ of
error in K. B.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: whereas *Marmaduke A.* lately in our court before *Edward N. kn. J. P. kn. and J. B. kn.* our justices of the bench at *Westminster*, by our writ, and by the judgment of the same court, recovered against *Michael A.* of the parish of *St. Paul Covent-garden* in the county of *Middlesex*, gent. 200 l. debt, and also

60 s. for his damages which he sustained, as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the same *Michael* is convicted, as by the inspection of the record and proceedings thereof, which we lately for certain causes of error caused to be brought into our court before us, appears to us on record; and now on the behalf of the said *Marmaduke*, in our court before us, we have understood, that although judgment aforesaid in form aforesaid is given, execution nevertheless for the debt and damages aforesaid yet remains to be made to him; wherefore the same *Marmaduke* hath besought us to grant him his proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *Michael* that he be before us from the day of _____ to shew if he hath or can say any thing for himself, why the said *Marmaduke* ought not to have his execution against him for the debt and damages aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our same court before us shall then and there consider concerning him in this behalf; and have there the names of those by whom you shall give him notice, and this writ. Witness, &c.

[641]

WILLIAM, &c. To the mayor and bailiffs of our town of *Northampton*, greeting: whereas *Peter L.* lately in our court of the town aforesaid before you, without our writ, and by the judgment of the same court, recovered against *Francis S.* esq; 37 l. 6 s. 9 d. for his damages which he sustained as well by reason of the non-performance of certain promises and assumptions to the same *Peter L.* by the said *Francis* lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Francis* is convicted, as by the inspection of the record and proceedings thereof in our court of record of the town aforesaid, which we lately for certain causes of error caused to be brought before us, appears to us on record: and now on the behalf of the said *Peter L.* in our said court of record of the town aforesaid before you we have understood, that altho' the judgment aforesaid in form aforesaid is given, yet execution for the damages aforesaid still remains to be made to him; wherefore the same *Peter L.* hath besought us to grant him his proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of the bailiwick of the town aforesaid you give notice to the said *Francis S.* that he be before us from the day of _____ wheresoever, &c. to shew if he hath or can say any thing for himself why the said *Peter L.* ought not to have his execution against him for the damages aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our same court before us shall then

Otherwise on a judgment in an inferior court.

then and there consider concerning him in this behalf; and have there then the names of those by whom you shall give him notice, and this writ. Witness *J. Holt*, knt. at *Westminster* 12th day of *February* in the 13th year of our reign.

Otherwise in
case on a judg-
ment in C. B.
in the time of
the late king
removed by
error into K. B.

A N N E, &c. To the sheriffs of *London*, greeting: where-
as *George O.* by plaint in the court of the lord *William* the
Third, late king of *England*, &c. before *Thomas Trevor*, knt.
and his companions, our justices of the same late king of the
bench at *Westminster*, and by the judgment of our court of the
bench aforesaid, recovered against *S. S.* late of, &c. *J. B.* late
of, &c. and *W. K.* late of, &c. 40*7* *l.* 10*d.* for his damages
which he sustained as well by reason of the non-performance of
certain promises and assumptions by them the said *S. J.* and *W.*
to the same *George* lately made, as for his costs and charges by
him about his suit in that behalf expended, whereof the said *S. J.*
and *W.* are convicted, as by the inspection of the record and
proceedings thereof, which we lately for certain causes of error
caused to be brought into our court before us, appears to us on
record: and now on the behalf of the said *George* in our court
before us we have understood, that altho' judgment thereof is
given, execution nevertheless of the judgment aforesaid yet re-
mains to be made to him; wherefore the same *George* hath be-
sought us to grant him his proper remedy in this behalf: and we
being willing that what is just in this behalf should be done,
command you, that by good and lawful men of your bailiwick
you give notice to the said *S. J.* and *W.* that they be before us
from the day of *St. Michael* in three weeks, wheresoever, &c.
to shew if they have or can say any thing for themselves why the
said *George* ought not to have his execution for the damages aforesaid
against the said *S. J.* and *W.* according to the force, form
and effect of the recovery aforesaid, if they shall think fit, and
farther to do and receive what our same court before us shall
then and there consider concerning them in this behalf; and have
there the names of those, &c.

Scire facias
quare restitu-
tionem non on a
judgment re-
versed in K. B.

W I L L I A M, &c. To the sheriff of *Northampton*, greet-
ing: whereas *John A.* lately in our court, to wit, in
Michaelmas term in the fifth year of our reign before *George*
Treby, knt. and his companions, then our justices of the same
court, recovered against *Robert C.* late of and *M.* his
wife, *Abraham W.* late of and *Eleanor W.* late of
spinster, 13*l.* which were adjudged to the same *John* in our said
court of common bench at *Westminster* for his damages which he
sustained by reason of certain trespasses to the same *John* by the
said *Robert* and *M. Abraham* and *Eleanor*, with force and arms,
and against our peace, at *Lilborne* aforesaid done, whereof they
were convicted, as by the inspection of the record and proceed-
ings

jings thereof, which into our court before us at *Westminster* for certain causes of error to be corrected in the same we caused to be brought, appears to us on record: and whereas we for sundry errors in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid found, the judgment aforesaid have reversed and wholly annulled: and it is farther considered in our same court before us at *Westminster* aforesaid, that the said *Robert, Mary, Abraham* and *Eleanor*, be restored to all things which they have lost by reason of the judgment aforesaid: and now in our court before us, on the behalf of the said *Robert, Mary, Abraham* and *Eleanor*; we have understood, that the said *John* hath sued out his execution for the damages aforesaid by reason of the judgment aforesaid in our court of the bench aforesaid given, and of the damages aforesaid yet is possessed, to wit, at *Lilborne* aforesaid in the county aforesaid; whereupon the same *Robert, Mary, Abraham* and *Eleanor*, have besought us to grant them their proper remedy in this behalf: and we in this behalf being willing that what is just should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *John* that he be before us to shew if he hath or can say any thing for himself why the said *Robert, Mary, Abraham* and *Eleanor*, ought not to have restitution of the damages aforesaid, according to the force, form and effect of the judgment aforesaid in our said court before us given, and farther to do and receive, &c.

After execution executed.

WILLIAM and *Mary, &c.* To the sheriff of *Wilts*, greeting: whereas the lord *James* the Second, late king of *England*, by his writ reciting, that he had lately commanded his sheriffs of *Bristol*, that they should cause to be made of the goods and chattels of *E. S.* esq; otherwise called *E. S.* of *O.* in your county, esq; in their bailiwick, 400 *l.* debt which *E. C.* lately in the court of the said late lord the king before the late king himself at *Westminster* had recovered against him, and also 43 *s.* 4 *d.* which in the same court of the said late lord the king before the late king himself at *Westminster* were adjudged to the same *E. C.* for his damages which he had sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as to the said late lord the king appeared on record; and that they should have that money before the said late lord the king at *Westminster* on a certain day in the same writ contained, to be paid to the said *E. C.* for his debt and damages aforesaid; and his said sheriffs of *Bristol* did thereon return to the said late lord the king, that the said *E. S.* had no goods or chattels in their bailiwick whereof they could cause to be made or levied the debt and damages aforesaid, or any penny thereof; whereupon on the behalf of the said *E. C.* in the court of the said late lord the king before the late king himself it was sufficiently testified, that the said *E. S.* had sufficient goods and chattels in your

Sic faciat ag. iust. the late sheriffs, why they should not pay the money levied on a fieri faciat.

*Testatum fieri
facias.*

Part levied,

and not paid.

county whereof the debt and damages aforesaid might be levied: therefore the said lord *James* the Second, late king of *England*, did thereupon command the then sheriff of your county aforesaid, that he should cause to be made of the goods and chattels of the said *E. S.* in his bailiwick the debt and damages aforesaid, and that he should have that money before the said late king at *Westminster* on *Thursday* next after the morrow of *All Souls* in the fourth year of his reign, to be paid to the said *E. C.* for his debt and damages aforesaid; upon which said writ *Jeremiah C.* esq; then sheriff of your county aforesaid, returned, that by virtue of the writ aforesaid to him directed, he had taken goods and chattels of the said *E. S.* to the value of 216 *l.* of the said 400 *l.* and also of the 43 *s.* 4 *d.* parcel, as by the writ of *testatum fieri facias* aforesaid, and the return thereof in our court before us on record filed, more fully appears: and whereas because the said *J. C.* had not the said 216 *l.* before the said late lord the king on the said day next after to be paid to the said *E. C.* in part of the debt and damages aforesaid, nor hath hitherto in any manner satisfied or paid them to the said *E. C.* as by the suggestion of him the said *E. C.* we have in our court before us understood: therefore we command you, that by good and lawful men of your bailiwick you give notice to the said *Jeremiah C.* that he be before us on to shew if he hath or can say any thing for himself why the said *Edward C.* ought not to have his execution against him for the said 216 *l.* by him so as aforesaid levied, if he shall think fit, and farther to do and receive what our court before us shall then and there consider concerning him in this behalf; and have there then the names of those by whom you shall give him notice, and this writ. *Witness, &c.*

[643]
Scire facias on a
recognisance on
a writ of error
removed out of
C. B. into *K. B.*
by *certiorari*.

WILLIAM and *Mary, &c.* To the sheriffs of *London*, greeting: whereas *Adam B.* lately in our court before *H. P.* knt. and his companions our justices of the bench, by our writ, and by the judgment of the same court, recovered against *Lionel W.* late of *London*, esq; otherwise called *L. W.* of *H.* in the county of *H.* esq; 800 *l.* debt, and also 40 *s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *Lionel* is convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court before us at *Westminster* by virtue of our writ of error, it appears to us on record: and whereas the said *L. W.* after the recovery of the judgment aforesaid, to wit, the 30th day of *December* in the first year of our reign, prosecuted out of our court of chancery (the same court being then at *Westminster* in the county of *Middlesex*) our certain writ of error of and upon the judgment aforesaid to the said *H. P.* directed, returnable before us on the octave of the purification of the blessed *Mary* last past, whereforever we should then be in *England*; upon which said writ of error the record and proceedings

proceedings of the judgment aforesaid, with all things touching them, were to us into our court before us at *Westminster* by the said *Henry P.* transmitted; upon which said record afterwards, to wit, in *Trinity* term last past it was in our court before us at *Westminster* considered, that the said *Adam* should have his execution against the said *Lionel* for the debt and damages aforesaid, according to the force, form and effect of the recovery aforesaid, by the default of him the said *L.* as by the record in our said court before us at *Westminster* on record remaining more fully appears: and whereas after the prosecution of the said writ of error, and before the return of the same, to wit, on the 23d day of *January* in *Hilary* term last past, *L. W.* of, &c. knt. *S. P.* of, &c. clockmaker, and *W. B.* of, &c. esq; came before the said *H. P.* our chief justice of the bench aforesaid, at his chambers situate in the *Inner Temple, London*, and the said *L. S.* and *W.* acknowledged, and every of them acknowledged, that they severally owed to the said *A. B.* the sum of 1600 *l.* which they granted, and every of them granted, to be levied on their and every of their lands and chattels, on condition nevertheless receiving, that whereas the said *Lionel W.* esq; had prosecuted the said writ of error to the above named *H. P.* knt. the chief justice of the court of common bench, directed for the certifying out of the court of common bench into the court of king's bench the record and proceedings of the plea and judgment against the said *L. W.* in the said plea of debt 800 *l.* Therefore the condition of that recognisance was such, that if the said *L. W.* by himself or his sufficient attorney should prosecute the said writ of error with effect, and also should satisfy and pay to the said *A. B.* (if the judgment aforesaid should be affirmed, or the said writ of error should be discontinued by the default of him the said *Lionel*, or if the said *Lionel* should be nonsuited) as well the said debt as all the said damages and costs upon the judgment aforesaid adjudged, and all such costs, damages, sum and sums of money, as should be adjudged upon or after the judgment affirmed, discontinuance or nonsuit had, then the recognisance aforesaid should be void and of no effect, or otherwise should remain in its full force and strength, as by the record of the recognisance aforesaid, which we have caused to be brought into our court before us, appears to us in our court before us at *Westminster* on record: and now on the part of the said *Adam* we have in our court before us understood, that the same *L. W.* esq; hath not prosecuted his writ of error aforesaid with effect, nor paid and satisfied to him the said *Adam* the said 800 *l.* whereby the recognisance aforesaid remains against them the said *L. S.* and *W.* in its full force and strength: therefore we command you, that by good and lawful men of your bailiwick you give notice to the said *L. S.* and *W.* that they be before us on the morrow of *All Souls*, wheresoever, &c. to shew if they have or can say any thing for themselves, why the said *Adam* ought not to have his execution against them for the said 1600 *l.* as aforesaid acknowledged,

ledged, according to the force, form and effect of the recogni-
fance aforesaid, if they shall think fit, and farther to do and re-
ceive all and every thing which our same court before us shall
then and there consider concerning them in this behalf; and
have there then the names of those by whom you shall give them
notice, and this writ. Witness, &c.

[644]

Scire facias to
hear the record
on a writ of error
out of C. B. on
judgment against
the heir and
tertenant on a
scire facias.

WILLIAM, &c. To the sheriff of *Stafford*, greeting:
whereas lately in our court before *Edward H. knt.* and
his companions, justices of the lord *James* the Second, late king
of *England, &c.* of the bench at *Westminster* it was considered,
that *William G.* son and executor of the last will and testament
of *W. G.* his father deceased, should have execution against
Lewis D. and *Mary D.* tenants of the lands and tenements of
Lewis D. late of, &c. then deceased, as well for a certain debt
of 600*l.* as 7*l.* which to the same *William* the father in the said
court of common bench, before *O. St. John* and his compani-
ons, justices of the lord *Charles* the First, late king of *England,*
&c. at *Westminster* were adjudged against him the said *L.* de-
ceased for his damages which he had sustained by reason of the
detention of that debt, whereof the same *L.* and *Mary* the ter-
tenants on a writ of *scire facias* against the tenants of the lands
and tenements of the said *L.* deceased, on the judgment afore-
said issued are convicted: and because in the adjudication of the
execution aforesaid a manifest error hath happened in the record
and proceedings of that adjudication, to the great damage of the
said *L.* the tertenant and *Mary*, as by the complaint of the said
L. and *Edward C.* which said *Edward* afterwards took the said
Mary for his wife, we have understood, the record of which
said judgment and writ of *scire facias* we lately caused to be
brought before us for certain causes of error, appears to us on
record: therefore we command you, that by good and lawful
men of your bailiwick you give notice to the said *W. G.* the
son, that he before us on the morrow of *St. Martin*, wherefo-
ever, &c. to hear the record and proceedings aforesaid, if he
shall think fit, and farther to do and receive, &c.

The like to hear
errors on a writ
of error to re-
verse an outlaw-
ry in K. B.

WILLIAM, &c. To the sheriffs of *London*, greeting:
whereas *T. C.* the elder, gent. lately in our court before
us impleaded *T. C.* late of *London* the younger, gent. in a plea,
why, &c. (*recite the writ to*) to the damage of him the said *T. C.*
the elder 100 *l.* as it is said: and the same *T. C.* the younger,
because he did not come before us to answer the said *T. C.* the
elder therein, was put in *exigent*, and in the hustings of *London*
on that account was afterwards outlawed, as by the inspection
of the record and proceedings thereof in our court before us
remaining manifestly appears: and because on the part of the
said *T. C.* the younger, as we are informed, a manifest error
hath happened in the record and proceeding, and also in the
pronouncing of the outlawry aforesaid; and thereupon the same
T. C.

J. C. the younger hath prosecuted our writ of error, directed to our justices assigned to hold pleas before us, commanding them, that inspecting the record and proceedings aforesaid they farther cause to be done therein for the annulling of the outlawry aforesaid what of right and according to the law and custom of this kingdom of *England* shall be to be done; and the same *T. C.* the younger hath thereupon duly assigned his errors on record, as by the inspection thereof likewise appears to us: therefore we command you, that by good and lawful men of your bailiwick you give notice to the said *T. C.* the elder, that he be before us from the day of *Easter* in five weeks, whereforever, &c. to hear the record and proceedings aforesaid, and also the errors in the pronouncing of the outlawry aforesaid assigned, if he shall think fit, and farther to do and receive what our same court before us shall then and there consider concerning him in this behalf: and have there the names of those by whom you shall give him notice, and this writ. Witness *J. Holt*, knt. at *Westminster* 11th day of *May* in the 10th year of our reign.

Holt. Coleman.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: whereas *F. T.* of, &c. and *J. W.* of &c. on the second day of *May* in *Easter* term in the fourth year of our reign came into our court before us at *Westminster* in their proper persons, and according to the form of the statute to prevent unnecessary delays of execution thereof made and provided, acknowledged they owed, and each of them for himself acknowledged he owed, to *Humphry T. gent.* 202*l.* of lawful money of *England*, to be paid to the said *Humphry*, his executors or assigns; and unless they did, the same *E.* and *J.* granted, and each of them for himself granted, the said 202*l.* to be made on their and each of their lands and chattels, and levied to the use of him the said *Humphry* on the condition following: that whereas the said *H. T.* lately in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, had recovered against *J. J. gent.* 101*l.* for his damages which he had sustained as well by reason of a certain trespass on the case, to the said *Humphry* by the said *J. J.* done, as for his costs and charges by him about his suit in that behalf expended, whereof the said *J. J.* is convicted, as in our said court before us appears on record: and whereas the said *J. J.* had prosecuted our writ of error upon the judgment aforesaid, returnable before our justices of the common bench and the barons of our exchequer of the degree of the coif in our exchequer chamber on, &c. If therefore the said *J. J.* should prosecute the said writ of error with effect, and if the judgment aforesaid should be affirmed against the said *J. J.* then if the same *J. J.* should satisfy and pay to the said *H. T.* the damages aforesaid, and also all such costs and damages as should be adjudged to the said *H. T.* by reason of the delay of

Scire facias against bail on a recognisance on a writ of error in the exchequer chamber.

[645]

his execution upon the judgment aforesaid on the pretence of the prosecution of the said writ of error, then that recognisance should be void and of none effect, or else should remain in its full strength and effect, as by the record thereof in our said court before us at *Westminster* remaining manifestly appears; and whereas also the judgment aforesaid afterwards, to wit, in *Hilary* term last past in our exchequer chamber aforesaid before the justices and barons aforesaid, was duly affirmed, and 10*l.* to the same *H. T.* in our same exchequer chamber before the justices and barons aforesaid, according to the form of the statute thereof made and provided, were adjudged for his damages, costs and charges which he had by reason of the delay of his execution of the judgment aforesaid on the pretence of the prosecution of the said writ of error, as by the record and proceedings thereof by the said justices and barons, according to the form of the statute aforesaid, from our said exchequer chamber into our said court before us at *Westminster* remitted, and in our same court before us remaining manifestly appears; and the said *J. J.* hath neither paid nor satisfied to the said *H. T.* either the damages aforesaid by him the said *H. T.* in our said court before us in form aforesaid recovered, nor the said 10*l.* to the same *H. T.* in our said exchequer chamber in form aforesaid adjudged, as we have by the suggestion of the said *H.* in our court before us understood; wherefore the same *H.* hath besought us to grant him his proper remedy in this behalf: and we in this behalf being willing that what is just should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *E. T.* and *J. W.* that they be before us at *Westminster* on _____ to shew if they have or can say any thing for themselves, why the said 20*l.* by them in form aforesaid acknowledged ought not to be made of their lands and chattels, and levied to the use of the said *H. T.* according to the force, form and effect of the recognisance aforesaid, if they shall think fit, and farther to do and receive all and singular those things which our court before us shall then and there consider concerning them in this behalf; and have there then the names of those by whom you shall give them notice, and this writ. Witness, &c.

Seire facias for an administratrix on a judgment recovered by the intestate in C. B. and affirmed on a writ of error.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: whereas *T. A.* the younger, gent. lately in our court before *E. N. knt.* and his companions, our justices of the bench at *Westminster*, by our writ, and by the judgment of the same court, recovered against *W. S.* 18*l.* 19*s.* 8*d.* debt, and also 17*l.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as by the inspection of the record and proceedings thereof, which we lately for certain causes of error caused to be brought into our court before us at *Westminster* appears to us on record, and likewise 9*l.* which to the same *Thomas* in our same court before

before us at *Westminster* aforefaid according to the form of the statute thereof lately made and provided, were adjudged for his damages, costs and charges which he had by reason of the delay of execution of the judgment aforefaid, on pretence of the prosecution of our certain writ of error by the faid *W. S.* against him the faid *T. A.* of and upon the premisses prosecuted, upon which faid writ of error the judgment aforefaid against the faid *W. S.* is in all things affirmed, as appears likewise to us on record : and whereas the same *T. A.* afterwards, to wit, on the first day of *May* in the year of the Lord 1693, at the parish of in your county, died intestate ; and afterwards, to wit, on in the year of the Lord 1694, administration of all and singular the goods and chattels, rights and credits, which belonged to the faid *T. A.* at the time of his death, to *Judith A.* by *Thomas P. knt.* in and thro' the whole archdeanary of *London* official lawfully constituted (to whom the commission of the administration aforefaid did of right belong) at the parish of in your county aforefaid was in due form of law committed : and whereas on the behalf of the faid *Judith* we have in our court before us understood, that altho' judgment thereof is in form aforefaid given, execution nevertheless for the debt and several damages, costs and charges aforefaid yet remains to be made to her ; wherefore the faid *Judith* hath besought us, &c.

England, **T**HE lord the king sent to the sheriffs of *London* to wit. *London* his writ close in these words, to wit, *Charles, &c.* To the sheriffs of *London*, greeting : whereas *John B.* lately in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, recovered against *Jonathan W.* 100*l.* 10*s.* for his damages which he sustained as well by reason of the non-performance of certain promises and assumptions by the faid *Jonathan* to the same *John* lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Jonathan* is convicted, as appears to us on record, and also 11*l.* according to the form of the statute thereof lately made and provided, for his damages, costs and charges which he had by reason of the delay of execution of the judgment aforefaid, on the pretence of the prosecution of our certain writ of error by the faid *Jonathan* against the faid *J. B.* before our justices of the bench and the barons of the exchequer of the degree of the coif, according to the form of the statute in such case lately made and provided, prosecuted : and afterwards, to wit, on in the 32d year of our reign, at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheape*, the faid *John B.* died intestate ; after whose death administration of all and singular the goods and chattels, rights and credits, which belonged to the faid *John B.* at the time of his death, by *William* by divine providence archbishop of *Canterbury*, primate and metropolitan of all *England*, on the second day of *December* in the year of the Lord 1680, at *London* aforefaid

[646]

The entry of the pleading on a *scire facias* brought by an administrator on a judgment in case in K. B. affirmed in the exchequer chamber.

aforesaid in the parish and ward aforesaid, to one *Anne B.* widow and relict of the said *John B.* was committed, as by the suggestion of the said *Anne* in our court before us we have understood; and altho' judgment thereof is given, execution nevertheless for the damages aforesaid yet remains to be made for her; wherefore the same *Anne* hath besought us to grant her a proper remedy in this behalf: and we in this behalf being willing that what is just should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *Jonathan W.* that he be before us at *Westminster* on *Tuesday* next after 15 days of *St. Hilary*, to shew, if he hath or can say any thing for himself, why the said *Anne* ought not to have her execution against him for the damages aforesaid, according to the form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our same court before us shall then consider concerning him in this behalf; and have there then the names of those by whom you shall give him notice, and this writ. Witness *W. Scruggs*, knt. &c.

Henry.

The return.

On which day before the lord the king at *Westminster* comes the said *Anne* in her proper person; and the sheriffs of *London*, to wit, *H. C.* esq; and *S. B.* esq; return, that they, by virtue of the writ aforesaid to them therefore directed by *P. P.* and *J. D.* good and lawful men of their bailiwick, had given notice to the said *Jonathan W.* that he should be before the lord the king on the day and place aforesaid, to shew, according to the command of that writ, as they were within commanded; and the said *Jonathan W.* on the same day by *R. R.* his attorney comes and says, that the said *Anne* ought not to have her execution against him for the damages, costs and charges aforesaid, because he says, that there is not any such record of the recovery of the damages, costs and charges, as by the writ aforesaid is above supposed: and this he is ready to verify: wherefore he prays judgment if the said *Anne* ought to have her execution against him for the damages, costs and charges aforesaid, &c.

Plea, no such record.

Peopl' that there is.

And the said *Anne* says, that she by any thing by the said *Jonathan* above in pleading alledged ought not to be precluded from having her execution against him for the damages, costs and charges aforesaid, because she says, that there is such record of the recovery aforesaid in the court of the said lord the king before the king himself of record remaining of *Hilary* term in the 31st and 32d years of the reign of the said lord the king, Roll 829. and prays, that that term and roll by the court of the said lord the king may be seen and inspected: and because the court of the said lord the king here are not yet advised to give their judgment thereon, day therefore is given to the parties aforesaid until day next after to hear their judgment on that issue, because the court of the said lord the king

king thereof not yet, &c. On which day before the said lord the king at *Westminster* come the parties aforesaid; and the same *Anne* shews here in court the record of the recovery aforesaid remaining before the lord the king here of the term and roll aforesaid; which being read, and by the court of the said lord the king here fully examined and understood, it sufficiently appears that that record is the record of the recovery aforesaid in the writ aforesaid mentioned: therefore it is considered, that the plaintiff may have her execution against the said *Jonathan* for the damages aforesaid, according to the force, form and effect of the recovery aforesaid, &c.

Q. The shewing of the record,

[647]

ANNE, &c. To the sheriff of *Middlesex*, greeting: whereas your predecessor our late sheriff of *Middlesex* was commanded, that he should take *W. G.* late of *Westminster*, esq; otherwise called *W. G.* of the *Middle Temple*, esq; if, &c. and safely, &c. so that he might have his body before our justices at *Westminster* on the octave of *St. Hilary*, to satisfy *A. S.* as well a certain debt of 200*l.* which the same *A.* in our court before our justices at *Westminster* recovered against him, as 12*l.* which to the same *A.* in our court were adjudged for his damages which he sustained by reason of the detention of that debt whereof he was convicted; and on the same day came the said *A.* by his attorney, and offered himself the fourth day of plea against the said *W. G.* in the plea aforesaid, and he did not come; and the sheriff then returned, that he was not found: therefore the sheriff was commanded, that he should cause the said *W. G.* to be called from county to county, until, &c. so that he might have his body on the morrow of the holy *Trinity*, to satisfy the said *A.* in the plea aforesaid: and be it known, that the justices in our said court in that same term delivered the writ thereof to the under-sheriff of your county aforesaid in form of law to be executed, &c. On which day your same predecessor the sheriff returned, that at his county held at the *Hercules Pillars* in *Brook-street*, in the county aforesaid on the third day of *June* in the second year of our reign, the said *W. G.* was the fifth time called, and did not appear; and so at the four counties then next preceding, the same *W.* was likewise called, and did not appear; and because he did not appear at any of the said counties, therefore he was outlawed, as by the record and proceedings thereof, which we have lately caused to be brought into our court before us for certain causes of error, appears to us on record; and the same *W. G.* hath thereupon duly assigned errors on record, as by the inspection of the record thereof appears likewise to us on record: therefore we command you, that by good and lawful men of your bailiwick you give notice to the said *A. S.* that he be before us from the day of where-soever, &c. to hear the record and proceedings aforesaid, and also the errors in the pronouncing of the outlawry aforesaid, if he shall think fit, and farther to do and receive what our same court

Scire facias to hear errors assigned on an outlawry pronounced.

court before us shall then and there consider concerning him in this behalf; and have there the names of those by whom you shall give him notice, and this writ. Witness *J. Holt*, *knt.* &c.

Scire facias
against an ad-
ministratrix,
why damages
should not be
assessed where
the defendant
died before the
return of the
writ of inquiry.

ANNE, &c. To the sheriff of *Middlesex*, greeting: where-
as *R. S.* lately in our court before us at *Westminster*, to wit,
in *Michaelmas* term last past, by bill, without our writ im-
pleaded *J. H.* then being in the custody of the marshal of our
Marsbalsca before us, for this, to wit, that whereas (*recite the*
declaration) to the damage of him the said *R.* 40*l.* as he said:
and therefore he then produced the suit, &c. And it was in
such manner in our same court before us at *Westminster* proceed-
ed, that the said *R.* ought to recover his damages by reason of
the non-performance of the several promises and assumptions
aforesaid: but because it was not known to our court before us
what damages the same *R.* had sustained by reason of the pre-
misses aforesaid, therefore we commanded you, that by the oath
of 12 good and lawful men of your bailiwick you should dili-
gently inquire what damages the said *R.* had sustained as well
by reason of the non-performance of the several promises and as-
sumptions aforesaid, as for his costs and charges by him about
his suit in this behalf expended; and the inquisition which you
should make thereof should send to us at *Westminster* on *Wednes-*
day next after 15 days of *Easter* under your seal and the seals of
those by whose oath you should take that inquisition, together
with that writ; and the same day was given to the said *R.* be-
fore us at *Westminster* aforesaid, as by the record and proceed-
ings thereof in our said court before us at *Westminster* remaining
manifestly appears: and whereas before the said *Wednesday*
next after 15 days of *Easter*, the said *J. H.* at *Westminster*
aforesaid in your county aforesaid died intestate, and the inquiry
of the damages aforesaid yet remains to be made; and one *M.*
H. the widow and relict of him the said *J.* is administratrix of
all and singular the goods and chattels, rights and credits, which
belonged to the said *J. H.* her late husband deceased, as we
have by the suggestion of the said *R. S.* understood: and be-
cause we are willing that those things which are lawfully trans-
acted in our court before us should be carried into due execu-
tion, we command you, that by good and lawful men of your
bailiwick you give notice to the said *M.* that she be before us at
Westminster on *Saturday* next after the morrow of *All Souls*, to
shew, if she hath or can say any thing for herself, why the da-
mages aforesaid in the action aforesaid ought not to be assessed,
and by the said *R.* recovered, according to the form and effect
of the statute in such case lately made and provided, if she shall
think fit, and farther to do and receive, &c.

On which day before the lady the queen at *Westminster* comes the said *R.* by *M. T.* his attorney; and the sheriff of the county of *Middlesex*, to wit, *G. H.* knt. and *J. W.* esq; returns, that by *R. N.* and *J. S.* good and lawful men of his bailiwick, he had given notice to the said *M.* that she be before the said lady the queen on the day and place in the writ aforesaid contained, to shew, &c. according to the tenor of the writ aforesaid; which said *M.* so warned, on the same day being solemnly called by *J. B.* her attorney comes; whereupon the said *R.* prays that the damages aforesaid in the action aforesaid may be assessed, and by him the said *R.* recovered, &c.

Upon which the administratrix pleaded several judgments in bar; to which the plaintiff demurred, and she joined in demurrer; and judgment was thereon given for the plaintiff. Salk. 315.

A N N E, &c. To the sheriffs of *London*, greeting: whereas by the grievous complaint of *J. D.* of *London*, ironmonger, (and so on in the audita querela to) whereupon the same *Joseph D.* hath most humbly besought us to grant him a proper remedy in this behalf: and because we are unwilling that the said *Joseph* should be in any wise injured in this behalf, and are willing that what is just should be done, we command you, that by good and lawful men of your bailiwick you give notice to the said *William S.* that he be before us on wheresoever, &c. to shew, if he hath or can say any thing for himself, why the said *Joseph* from the debt and damages aforesaid against him in form aforesaid recovered ought not to be quit, discharged, and out of our prison of the *Fleet*, in which he is on that account detained, released, if he shall think fit, and farther to do and receive what our court before us shall consider in this behalf; and have there the names of those by whom you shall give him notice, and this writ. Witness *J. Holt*, knt. at *Westminster* 26th day of *May* in the 6th year of our reign.

Scire facias in audita querela on the new statute in K. B.

A N N E, &c. To the sheriff of *Middlesex*, greeting: whereas *Nicholas W.* gent. in the court of the lord *William* the Third, late king of *England*, &c. before the late king himself at *Westminster*, by the writ of the said late king of assise of novel disseisin, which the said *N. W.* arraigned before the said late king at *Westminster* against *W. S.* esq; and by the judgment of the same court, recovered against him the said *W. S.* his seisin of the office of marshal of the *Marshalsea* of the said late lord the king, being before the king himself, with the appurtenances in the parish of *St. Margaret Westminster* in our county of *Middlesex*, by view of the recognitors of the assise aforesaid, whereon the same *W. S.* is convicted, as by the record and proceedings thereof remaining in our court before us is more fully manifest and appears: and now on the part of the said *N. W.*

Scire facias to receive a judgment in an assise of novel disseisin.

in our court before us we have understood, that altho' the judgment aforesaid in form aforesaid is given, execution nevertheless of that judgment yet remains to be made; wherefore the said *N. W.* hath besought us to grant him his proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *W. S.* that he be before us at *Westminster* on *Saturday* next after the octave of *St. Hilary*, to shew, if he hath or can say any thing for himself, why the said *N. W.* ought not to have a writ of seisin of the office aforesaid with the appurtenances of and upon the judgment aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our court before us shall then and there consider concerning him in this behalf; and have, &c.

[649]

The entry of a
seire facias
against the heir
and tertenant
for an executor.

THE lord and lady the king and queen sent to the sheriffs of *London* their writ close in these words, to wit, *William, &c.* To the sheriffs of *London*, greeting: whereas *Amy V.* gent. lately in the court of the lord *Charles* the First, late king of *England, &c.* before the late king himself at *Westminster*, by bill, without the writ of the said late king, and by the judgment of the same court, recovered against *Henry B.* then bart. late merchant, otherwise called *H. B.* of *London*, merchant, 500*l.* debt, and also 45*s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as it appears to us on record; execution nevertheless of that judgment yet remains to be made; and as well the said *A.* as the said *H.* are dead, as by the suggestion of *Edward V.* executor of the last will and testament of the said *A.* we have in our court before us understood; wherefore the same *Edward* hath besought us to grant him his proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the tenants of all the lands and tenements in your bailiwick, whereof the said *H.* or any other person or persons, was or were seised to the use of the said *H.* on *Wednesday* next after 15 days of *Easter* in the 22d year of the reign of the said late king of *England, &c.* on which day the judgment aforesaid was given, or ever after, that they be before us at *Westminster* on *Tuesday* next after 15 days of *St. Martin*, to shew, if they have or can say any thing for themselves, why the said *E.* ought not to have his execution against them for the debt and damages aforesaid, to be levied on the lands and tenements which were his the said *H.* according to the force, form and effect of the recovery aforesaid, if they shall think fit, and farther to do and receive what our court before us shall then and there consider concerning them in this behalf; and have there then the names of those by whom you shall give them notice, and

and this writ. Witness *J. Holt*, knt. at *Westminster* 23d day of *October* in the 4th year of our reign. *Henley*. On which day before the said lord and lady the king and queen at *Westminster* comes the said *E.* in his proper person; and the sheriffs of *London*, to wit, *T. L.* knt. and *T. C.* knt. return, that there are no tenants or tenant of any lands or tenements in their bailiwick whereof the said *H.* or any other person or persons to the use of him the said *H.* was or were seised on the said day of the rendition of the judgment aforesaid, or ever after, to whom they could give notice, as they were by that writ commanded; whereupon on the behalf of the said *E.* in the court of the said lord and lady the now king and queen before the king and queen themselves it is sufficiently testified, that there are several tenants of lands and tenements in the county of *Oxford* whereof the said *H.* or some other person or persons to the use of the said *H.* and his heirs, was or were seised on the said day of the rendition of the judgment aforesaid, or afterwards: therefore by another writ of the said lord and lady the king and queen the sheriff of *Oxford* aforesaid was commanded, that by good, &c. he should give notice to the tenants of all the lands and tenements of the said *H.* in his bailiwick, of which the said *H.* or any other person or persons, was or were seised to the use of the said *Henry* on the said day of the rendition of the judgment aforesaid, or ever after, that they be before the said lord and lady the king and queen at *Westminster* on *Monday* next after the octave of *St. Hilary*, to shew in form aforesaid, if, &c. and farther, &c. The same day is given to the said *Edward* there, &c. On which day before the said lord and lady the king and queen at *Westminster* comes the said *E.* in his proper person; and *T. C.* esq; sheriff of the county of *Oxford* aforesaid, on that day returns, that by virtue of that writ to him directed by *J. G.* and *W. J.* good and lawful men of his bailiwick, he had given notice to *W. B.* bart. tenant of 15 messuages, and 34 yard-lands arable, meadow and pasture, situate and being in *C.* in the county aforesaid, which were the lands and tenements of the said *H. B.* at the said time of the rendition of the judgment aforesaid; and afterwards that he be before the said lord and lady the king and queen on the day and place aforesaid, to shew, if he hath or can say any thing for himself, why the debt and damages aforesaid ought not to be levied on the lands and tenements aforesaid with the appurtenances, and paid to the same *E.* as the writ aforesaid last mentioned commands and requires: and upon this the same *E.* produces here in court the letters testamentary of the said *Amy*; whereby it sufficiently appears to the court here, that he the said *E.* is executor of the will of the said *A.* aforesaid, and thereof hath the administration, &c. And he prays execution to be adjudged to him against the said *W. B.* bart. for the debt and damages aforesaid on the lands and tenements aforesaid with the appurtenances to be levied, &c.

And

The defendant
appears.

[650]

And pleads that
H. B. was not
seised in fee.

And the said *W. B.* on the same *Monday* next after the octave of *St. Hilary*, being solemnly called by *J. L.* his attorney comes and says, that the said *E.* ought not to have his execution against him for the debt and damages aforesaid of the lands and tenements aforesaid in the return of the writ of *scire facias* aforesaid mentioned, whereof he is returned tenant, because he says, that the said *H. B.* in the same writ of *scire facias* mentioned, or any other person or persons to the use of him the said *Henry* and his heirs at the time of the rendition of the judgment aforesaid in the same writ abovementioned, or ever after, was not nor were seised of the same lands and tenements, or of any parcel thereof, in demesne as of fee; and this he is ready to verify: wherefore he prays judgment if the said *E.* ought to have his execution against him for the debt and damages aforesaid on the lands and tenements aforesaid, &c.

Replication that
he was.

And the said *E. V.* says, that he by any thing by the said *W. B.* before alledged ought not to be retarded from having his execution against him the said *W.* for the debt and damages aforesaid on the lands and tenements aforesaid, because he says, that the said *H. B.* in his life-time after the rendition of the judgment aforesaid, to wit, on the first day of *January* in the 24th year of the reign of the said late king *Charles* the First, was seised of the said lands and tenements in his demesne as of fee: and this he prays may be inquired of by the country: and the said *William* thereof likewise, &c. Therefore the sheriff of *Oxford* is commanded, that he cause to come before the said lord and lady the king and queen at *Westminster* on _____ day next after _____ 12 free and lawful men of the neighbourhood of *C.* aforesaid in the county of *Oxford* aforesaid, every of whom hath 10*l.* of land, tenements or rent by the year at least, by whom the truth of the matter may be the better known, and who are in no wise related either to the said *E.* or the said *W.* to recognize on their oath of and upon the premises more fully the truth, &c. On which day before the lord and lady the king and queen at *Westminster* comes as well the said *E.* in his proper person as the said *W. B.* by his attorney aforesaid; and the sheriff of the county of *Oxford* returns the writ of *venire facias*, together with the names of the jurors in all things served and executed, whereof none, &c. Therefore the sheriff of *Oxford* aforesaid is commanded, that he distrain the jurors aforesaid by all the lands, &c. and that of the issues, &c. so that he may have their bodies before the lord and lady the king and queen at *Westminster* on *Wednesday* next after 15 days of *Easter*, or before the justices of the said lord and lady the king and queen, assigned to take assises in the county aforesaid, if they shall first come on *Thursday* the 8th day of *March* at *Oxford* in the county aforesaid, by the form of the statute, &c. to recognize in form aforesaid: the same day is given to the parties aforesaid there, &c.

Venire awarded.

The return.

Distringas
awarded.

THE lord the king sent to the sheriffs of *London* his writ close in these words, to wit, *William, &c.* To the sheriffs of *London*, greeting: whereas *J. H.* gent. one of the attornies of our court of the bench at *Westminster*, lately in our same court of the bench, to wit, in *Trinity* term in the 9th year of our reign, before *G. T.* knt. and his companions, our justices of the bench, by our writ of privilege, and by the judgment of the same court, recovered against *N. C.* as well a certain debt of 100*l.* as 40*s.* which were adjudged to the same *J.* for his damages which he sustained by reason of the detention of that debt, whereof he was convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought before us for certain causes of error, appears to us on record; and we for sundry errors in the record and proceedings of the judgment aforesaid found have reversed the judgment aforesaid: and we have farther considered in our same court before us at *Westminster* aforesaid, that the said *N.* should be restored to all things which he hath lost by reason of the judgment aforesaid: and now on the behalf of the said *N.* in our court before us we have understood, that the said *J.* hath had execution for 63*l.* 9*s.* 6*d.* part of the debt and damages aforesaid, by pretence of the judgment aforesaid in our said court of the bench given, and of the said 63*l.* 9*s.* 6*d.* is yet possessed; wherefore the said *N.* hath besought us to grant him a proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *J.* that he be before us from the day of *St. Michael* in three weeks, wheresoever we shall then be in *England*, to shew, if he hath or can say any thing for himself, why the said *N.* ought not to have restitution of the said 63*l.* 9*s.* 6*d.* and farther to do and receive all and singular those things which our same court before us shall consider concerning him in this behalf; and have there then the names of those by whom you shall give him notice, and this writ. Witness *J. Holt*, knt, &c.

Holt. Coleman.

Scire facias for restitution after a judgment reversed on a writ of error in K. B.

On which day before the lord the king at *Westminster* comes the said *N. C.* in his proper person; and the sheriffs to wit, *D. G.* knt. and *J. S.* knt. return, that the said *J.* had nothing in their bailiwick whereby they could give him notice, nor was he found in the same: and the said *J.* altho' on the same day solemnly called, doth not come: therefore as before the sheriffs are commanded, that by good and lawful men of their bailiwick they give notice to the said *J.* that he be before the said lord the king on wheresoever he shall then be in *England*, to shew in form aforesaid: the same day is given to the said *N.* there, &c. On which day before the lord the king at

Westminster

[651]

The return.

An alias award.
ed.

The defendant
appears, and
prays *oyer* of the
writ of *scire
facias*, and then
pleads he did
not levy the
63 l. 9 s. 6 d.

Westminster comes the said N. in his proper person; and the sheriffs of *London* afore said as before return, that the said J. had nothing in their bailiwick whereby they could give him notice, neither was he found in the same: and the said J. on the fourth day of plea being solemnly called by H. W. his attorney, comes and prays *oyer* of the said first writ of the said lord the king of *scire facias*; and to him it is read: he prays likewise *oyer* of the said writ of the said lord the king of *alias scire facias*; and to him it is read in these words, to wit, *William, &c.* (and so on verbatim to the end) which being read and heard, the same J. says, that the said N. C. ought not to have restitution of the said 63 l. 9 s. 6 d. in the said writs of *scire facias* and *alias scire facias* mentioned, or of any part thereof against him the said J. because he says, that he the same J. never levied in execution, nor was possessed of the said 63 l. 9 s. 6 d. in the said writs of *scire facias* and *alias scire facias* mentioned, or of any part thereof, by pretence of the judgment afore said in the said writs of *scire facias* and *alias scire facias* mentioned, given in the court of the bench, and for errors in the court of the said lord the king here reversed and annulled, as in the said writs of *scire facias* and *alias scire facias* is supposed: and this he is ready to verify, as, &c. Wherefore he prays judgment if the said N. ought to have restitution thereof against him the said J. by reason of the reversal and annulling of the judgment afore said, &c.

Repl^d, levied by
fieri facias.

And the said N. C. says, that he by any thing by the said J. above in pleading alledged ought not to be precluded from having restitution of the said 63 l. 9 s. 6 d. because he says, that after the judgment afore said in form afore said given, and before the reversal thereof, to wit, in *Trinity* term in the ninth year of the reign of the lord the now king, a certain writ of the said lord the king of *fieri facias* of and upon the judgment afore said now reversed, issued out of the court of the said lord the king of the bench at *Westminster* in the county of *Middlesex* to the then sheriff of the county of *Surry* directed, by which said writ the same then sheriff was commanded, that he should cause to be made the debt and damages afore said of the lands and chattels of the said N. C. and should have that money before the same lord the king at *Westminster* on a certain day in *Michaelmas* term then next ensuing, to be paid to the said J. for the debt and damages afore said: by virtue of which said writ one W. M. esq; afterwards and before the return of the writ afore said, to wit, on the 6th day of *September* in the year above said, at C. in the said county of *Surry*, on the goods and chattels of the said N. C. caused to be levied the said sum of 63 l. 9 s. 6 d. and that sum to the same J. in part of satisfaction of that debt and his damages afore said, then and there paid (the same W. M. being then sheriff of the county of *Surry* afore said) of which said sum of 63 l. 9 s. 6 d. the same J. is yet there possessed: and this he is ready to verify; wherefore he prays

prays judgment and restitution of that sum to be adjudged to him, &c.

And the said *James* says, that *W. M.* esq; in the plea of the said *N.* mentioned did not cause to be levied the sum of 63 *l.* 9 *s.* 6 *d.* or any part thereof, on the goods and chattels of the said *N. C.* in manner and form as the said *N. C.* hath above by replying alledged: and of this the same *J.* puts himself on the country.

Rejoinder, and
issue thereon.

WILLIAM, &c. To the sheriff of *G.* greeting: because in the record and proceedings, and also in the rendition of the judgment of a plea which was in the court of the lord *Charles* the Second, late king of *England*, &c. of the great sessions in the said county of *G.* held before *R. L.* knt. and *T. T.* esq; then justices of the same late king, of *quod ei deforceat*, between *T. M.* esq; and *P. W.* esq; demandants, and *T. W.* esq; deforceant, of the manors of _____ with the appurtenances, and also of 500 messuages, 200 cottages, 500 barns, 500 stables, 500 orchards, 500 gardens, 15 water corn mills, six fulling mills, 6000 acres of land, 5000 acres of meadow, 6000 acres of pasture, four acres of wood, and five thousand acres of heath and furze with the appurtenances in the parishes of *L. L. L. N.* the town of *O.* &c. in the said county of *G.* which said writ the said *T. M.* and *P. W.* had made protestation in the same court to prosecute in the form and nature of the writ of the same late king of entry on *disseisin in le post* at the common law, according to the form of the statute of *Rutland*; and in which said plea *W. H.* and *J. W.* then tenants of the manors and tenements aforesaid with the appurtenances, and of the advowson aforesaid in the same court, vouched thereof to warranty *P.* who did warrant the same to them, and farther thereof vouched to warranty *Uriah H.* who did warrant them to him; which said record and proceedings the late king *James* the Second caused to be brought before him the said late king, and they now remain before us, a manifest error hath happened, to the great damage of *T. P.* and *M.* as by their complaint we have understood: and we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, that by good and lawful men of your bailiwick you give notice to the said *T. M.* and *P. W.* that they be before us on the octave of *St. Hilary*, wheresoever we shall then be in *England*, to hear the record and proceedings aforesaid, if they shall think fit, and farther to do and receive what our said court before us shall consider in this behalf; and have there the names of those by whom you shall give them notice, and this writ. Witness, &c.

The entry of a
scire facias to
hear errors on a
writ of error to
reverse a com-
mon recovery

[652]

I do certify to the lord the king within written, that the within named *T. M.* is dead, and that by *D. T.* and *W. P.* good
VOL. II. H h and

The return.

and lawful men of my bailiwick, I have given notice to the within named *P. W.* that he be before the lord the king within written on the day and place within contained, to hear the record and proceedings within written, if he shall think fit, and farther to do and receive what the court within named shall consider in this behalf, as I am within commanded.

Tho. Carne, esq; sheriff.

Plea, that *A.* and his wife are tenants not summoned.

And the said *P. W.* on the fourth day of plea being solemnly called by *J. L.* his attorney comes and says, that before the issuing of the said writ of error in this behalf, and ever after hitherto, *A. B.* and *C.* his wife, the only daughter and heir of the said *T. M.* were seised, and yet are seised, in the right of the said *C.* of and in all and singular the manors, messuages, lands, tenements and hereditaments in the said writ of *scire facias* above specified in their demesne as of fee, and that no writ of *scire facias* hath issued out of the court here against the said *A. B.* and *C.* his wife, to warn them to be here to hear the record and proceedings aforesaid, as there ought: and this he is ready to verify: wherefore for that the same *A. B.* and *C.* his wife are not summoned, nor in the said writ of *scire facias*, nor in the return aforesaid named tenants of the manors, messuages, lands, tenements and hereditaments aforesaid, the same *P. W.* prays judgment if he the same *P. W.* ought to be compelled to answer farther in the premisses before the said *A. B.* and *C.* his wife, shall be summoned to be before the lord the king to hear the record and proceedings aforesaid, if they shall think fit, &c.

A *scire facias* against an administrator on a judgment in debt, where part was levied on a *scire facias* in the life-time of the intestate.

WILLIAM, &c. To the sheriffs of *London*, greeting: whereas *J. W.* lately in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, recovered against *P. O.* esq; otherwise called, &c. 200*l.* debt, and also 46*s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *P.* is convicted, as it appears to us on record: and whereas for the levying of the debt and damages aforesaid of and upon the judgment aforesaid, we lately commanded you by our writ, that of the goods and chattels of the said *P.* in your bailiwick you should cause to be made the debt and damages aforesaid; and should have that money before us at *Westminster* on *Friday* in 15 days of *St. Martin* last past, to be paid to the said *J. W.* for his debt and damages aforesaid; and you on that day did thereon return to us, that the said *P.* had no goods or chattels in your bailiwick whereof you could cause to be made the debt and damages aforesaid, or any part thereof; whereupon on the behalf of the said *J.* in our court before us at *Westminster* it was sufficiently testified, that the said *P.* had sufficient goods and chattels in the county of *Kent*, whereof the debt and damages

gages aforefaid might be levied: therefore we did thereon command our ſheriff of *Kent*, that he ſhould cauſe to be made of the goods and chattels of the ſaid *P.* in his bailiwick the ſaid 200*l.* debt, and 46*s.* for the damages aforefaid; and that he ſhould have that money before us at *Weſtminſter* on *Wednesday* next after 15 days of *Eaſter*, to be paid to the ſaid *J.* for his debt and damages aforefaid; and our ſaid ſheriff of *Kent* on that day did return to us, that by virtue of the writ aforefaid to him directed, he had cauſed to be made of the goods and chattels of the ſaid *P.* O. 70*l.* 15*s.* 6*d.* part of the debt and damages aforefaid; which ſaid money he had ready on the day and place aforefaid, to be paid to the ſaid *J. W.* as by the writ aforefaid he was commanded: and he did farther certify, that the ſaid *P.* had no other or more goods and chattels in his bailiwick whereof he could cauſe to be made the reſidue of the debt and damages aforefaid, or any part thereof: and whereas the ſaid *P. O.* afterwards died inteſtate, the ſaid reſidue of the debt and damages aforefaid being then due and unpaid; and that adminiſtration of all and ſingular the goods and chattels, rights and credits, which belonged to the ſaid *P. O.* at the time of his death, was, as we are informed, in due form of law committed to *Jane O.* the widow and relict of the ſaid *P. O.* And now in our court before us we have underſtood, that execution for 131*l.* 10*s.* 6*d.* the reſidue of the ſaid 202*l.* 6*s.* yet remains to be made for the ſame *J. W.* wherefore the ſame *J. W.* hath beſought us to grant him his proper remedy in this behalf: and we being willing that what is juſt in this behalf ſhould be done, command you, that by good and lawful men of your bailiwick you give notice to the ſaid *J. O.* that ſhe be before us at *Weſtminſter* on

[653]

day next after to ſhew, if ſhe hath or can ſay any thing for herſelf, why the ſaid *J. W.* ought not to have his execution againſt her for the ſaid 131*l.* 10*s.* 6*d.* (being the reſidue of the debt and damages aforefaid) of the goods and chattels which belonged to the ſaid *P. O.* at the time of his death in the hands of the ſaid *J.* to be adminiſtered, according to the force, form and effect of the recovery aforefaid, if ſhe ſhall think fit, and farther to do and receive, &c.

THE lord the king ſent to the ſheriff of *Kent* his writ cloſe in theſe words, to wit, *William*, &c. To the ſheriff of *Kent*, greeting: whereas an aſſiſe of *novel diſſeiſin* was lately ſummoned and taken before *E. W.* knt. chief baron of our exchequer, and *E. L.* eſq; for that time aſſociated to the ſame *E. W.* and *W. G.* knt. then one of our juſtices aſſigned to hold pleas before us, our juſtices aſſigned to take aſſiſes in the county of *Kent*, by the form of the ſtatute, &c. the preſence of the ſaid *W. G.* being not expected, by virtue of our writ of *ſi non omnes*, &c. at *M.* in the county of *Kent*, by writ between *P. O.* eſq; and *R. S.* gent. of *Freehold* in *M.* in the county of *Kent*; the record and proceedings of which ſaid aſſiſe by ſeveral adjournments of the ſaid juſtices of aſſiſe came into

A ſcire facias in an aſſiſe of novel diſſeiſin for an adminiſtratrix for damages adjudged in C. B. and that judgment after reversed in K. B. and that reversal reversed in parliament.

The whole proceedings and judgment in this cause are in *Lilly's Affise*.

the court of the bench at *Westminster* : and whereas also the said *Philip* afterwards in our same court, to wit, in *Hilary* term in the 8th year of our reign, before *G. T. kn.* our chief justice of the bench, and his companions, then our justices of the bench aforesaid, by the consideration of the same court recovered his seisin against the said *Robert* of the office of clerk of the peace in and for the said county of *Kent*, by the view of the recognitors of the assise aforesaid, and his damages by reason of the disseisin aforesaid, besides his costs and charges, to 40*s.* by the recognitors aforesaid assessed, and also 67*l.* 15*s.* 5*d.* to the same *Philip*, at his request, by that court of increase adjudged; which said damages in the whole amount to 344*l.* 15*s.* 5*d.* which said record and proceedings after the rendition of the judgment aforesaid, we for certain reasons caused to be brought into our court before us, and that judgment by the same court before us was reversed, as it is said : and because in the reversal of that judgment before us a manifest error happened, to the great damage of him the said *Philip*, as by his complaint we have understood, we caused the record and proceedings aforesaid, with all things touching them, to be brought before us in our parliament : and afterwards, to wit, on the 3d day of *April* in the 11th year of our reign, it was considered by the court of parliament aforesaid, that the said judgment in our court before us, for the reversal and annulling of the judgment in our court before our justices of the bench aforesaid given, for the errors in the reversal and annulling of the same judgment found, be reversed, annulled, and held as intirely void ; and that the said judgment in our court before our justices of the bench aforesaid be in all things affirmed, and that the same *Philip* be restored to all things that he lost by reason of the reversal and annulling of the same judgment ; whereupon the record aforesaid, and also the proceedings aforesaid in the same court of parliament on the premisses had, are remitted into our court before us at *Westminster* : and whereas the said *Philip* afterwards, to wit, on the 7th day of the said month of *April* in the 11th year above said died intestate ; after whose death administration of all and singular the goods and chattels, rights and credits, which belonged to the said *Philip* at the time of his death, was by *Thomas* by divine providence archbishop of *Canterbury*, primate and metropolitan of all *England*, at *London* on the 24th day of the month of *April* in the year of the Lord 1699, committed to *Jane O.* the widow and relict of the said *Philip*, as by the letters of administration of the said archbishop in our court before us produced fully appears : and now on the behalf of her the said *Jane* in our court before us we have understood, that altho' the judgment in our court before our justices of the bench aforesaid by the court of parliament aforesaid is in all things affirmed, execution nevertheless of the judgment aforesaid yet remains to be made for her in delay of the execution of the administration aforesaid ; wherefore the said *Jane* hath besought us to grant her a proper

a proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *Robert S.* that he be before us on the morrow of the ascension of the Lord, wheresoever we shall then be in *England*, to shew, if he hath or can say any thing for himself, why the said *Jane* ought not to have her execution against the said *Robert* for the damages aforesaid, according to the force, form and effect of the judgment aforesaid, in our court before our justices of the bench aforesaid given, if he shall think fit, and farther to do and receive what our court before us shall consider in this behalf; and have there the names of those by whom you shall give him notice, and this writ. Witness *J. Holt*, knt. at *Westminster* 26th day of *April* in the 11th year of our reign.

On which day before the lord the king at *Westminster* comes the said *Jane* in her proper person; and the sheriff of *Kent*, to wit, *J. A.* esq; on that day returns, that by virtue of the writ aforesaid to him directed, by *R. T.* and *T. A.* good and lawful men of his bailiwick, he had given notice to the said *Robert S.* that he be before the lord the king on the day aforesaid, wheresoever, &c. to shew, &c. as by that writ he was commanded: and upon this the said *Jane* prays execution against the said *Robert S.* for the damages aforesaid, to be adjudged to her, &c. upon which the said *Robert S.* being so warned, and on the 4th day of plea solemnly called, in his proper person comes and prays judgment of the writ of *scire facias* aforesaid, because he says, that the writ of *scire facias* aforesaid, and the matter in the same contained, is insufficient in law to maintain her the said *Jane* to have her execution aforesaid against the said *Robert* for the damages aforesaid, to which said writ the same *Robert* hath no necessity, nor is by the law of the land obliged in any manner to answer: and this the same *Robert* is ready to verify: wherefore the said *Robert* prays judgment of that writ, and that the said *Jane* may be precluded from having her execution for the damages aforesaid against him the said *Robert*, &c.

The return.

Demurrer to the *scire facias*.

And the said *Jane* says, that she by any thing before alledged ought not to be precluded from having her execution for the damages aforesaid against him the said *R.* because she says, that the writ of *scire facias* aforesaid, and the matter in the same contained, is good and sufficient in law to maintain her the said *J.* to have her execution aforesaid against the said *R.* for the damages aforesaid; which said writ of *scire facias*, and the matter in the same contained, the same *Jane* is ready to verify and prove, as the court, &c. And because the same *R.* to that writ doth not answer, nor the matter in the same contained in any wise deny, the same *Jane* prays judgment, and her execution against the same *R.* for the damages aforesaid, to be adjudged to her, &c. And because the court of the said lord the king are not yet advised

Joinder.

vised to give their judgment of and upon the premisses, day there-
fore is given, &c.

*Scire facias in
debt for an ex-
ecutor.*

THE lord the king sent to the sheriffs of *London* his writ close in these words, to wit, *William, &c.* To the sheriffs of *London*, greeting: whereas *W. W.* merchant, lately in our court before us and our most dear consort the lady *Mary* late queen of *England, &c.* at *Westminster*, by bill, without our writ, and of the said late queen, and by the judgment of the same court, recovered against *M. N.* of the *Inner Temple, London*, esq; 800*l.* debt, and also 3 *l.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof he is convicted, as it appears to us on record: and afterwards the said *W. W.* made his last will and testament in writing, and of the same will constituted and ordained *W. W.* his son executor, and afterwards died: and now on the behalf of the same *W.* the executor we have in our court before us understood, that altho^o judgment thereof is given, execution nevertheless for the debt and damages aforesaid yet remains to be made; wherefore the same *W.* the executor hath besought us to grant him a proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *M. N.* that he be before us at *Westminster* on day next after to shew, if he hath or can say any thing for himself, why the said *W.* the executor ought not to have his execution against him for the debt and damages aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do, &c.

[655]
The return.

An alias.

Notice,

The will pro-
duced.

On which day before the lord the king at *Westminster* comes the said *W.* the executor in his proper person; and the sheriffs of *London*, to wit, *C. D.* knt. and *G. T.* knt. return, that the said *M.* hath nothing in their bailiwick where or by which they can give him notice, neither is he found in the same; and the said *M.* doth not come; therefore as before the sheriffs are commanded, that by good, &c. they give notice to the said *M.* that he be before the lord the king at *Westminster* on day next after to shew in form aforesaid, if, &c. The same day is given to the said *W.* the son there, &c. On which day before the lord the king at *Westminster* comes the said *W.* the son in his proper person; and the said sheriffs of *London*, to wit, the said *C. D.* and *G. T.* return, that they by virtue of the writ aforesaid to them directed, by *S. T.* and *D. H.* good and lawful men of their bailiwick, had given notice to the said *M.* that he should be before the said lord the king at *Westminster* on the day and place in the said writ contained, to shew in form aforesaid, as they were by the said writ commanded: and upon this the said *W.* the son produces here in court the said letters testamentary of

of the said *W. W.* the father ; whereby it sufficiently appears to the court of the said lord the now king, that he the said *W. W.* the son is executor of the will aforesaid, and thereof hath the administration, &c. And he prays execution against the said *M.* for the debt and damages aforesaid, by virtue of the recovery aforesaid, to be adjudged to him, &c. And the said *M.* according to the notice to him in this behalf given, on the same day being solemnly called by *J. L.* his attorney likewise comes, and prays judgment of the writ of *scire facias* aforesaid, because he says, that *W. W.* merchant, the testator, by his last will in writing, at *London* aforesaid in the parish and ward aforesaid, constituted *J. M.* merchant, and *J. S.* merchant, executors of his will aforesaid, together with the said *W. W.* the plaintiff; which said *J. M.* and *J. S.* are yet surviving and in full life, to wit, at *London* aforesaid in the parish and ward aforesaid : and this the same *M.* is ready to verify : wherefore for that the same *J. M.* and *J. S.* are not named in the writ of *scire facias* aforesaid, the same *M.* prays judgment of the writ of *scire facias* aforesaid, and that that writ may be quashed.

Plea, that *J. M.* and *J. S.* are executors with the plaintiff, and not named in the writ.

And the said *W. W.* the executor says, that by any thing before alledged his writ aforesaid ought not to be quashed, because he says, that the said *W. W.* merchant, did not constitute the said *J. M.* and *J. S.* executors of his will aforesaid, as the said *M.* hath above in pleading alledged : and this he prays may be inquired of by the country : and the said *M.* likewise, &c. Therefore let a jury thereon come before the lord the king at *Westminster* on *Monday* next after the morrow of the ascension of the Lord ; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Repl^r, that they are not.

Upon the trial the defendant had a verdict.

AND the said *Thomas* on the same day being solemnly called by *J. O.* his attorney comes and says, that the said *John* ought not to have his execution against him for the debt and damages aforesaid, because he says, that the said *John* after the rendition of the judgment aforesaid, to wit, in *Trinity* term in the 11th year of the reign of the lord the now king, obtained and prosecuted out of the said court of the said lord the king before the king himself, then being at *Westminster* aforesaid, of and upon the judgment aforesaid, a certain writ of the said lord the king of *capias ad satisfaciendum* against the said *Thomas* to the then sheriff of *Cornwall* directed ; by which said writ the said lord the king commanded the then sheriff of *Cornwall*, that he should take the said *Thomas*, if he should be found in his bailiwick, and safely keep him, so that he might have his body before the said lord the king at *Westminster* on *Wednesday* next after three weeks of the holy *Trinity*, to satisfy to the same *John* the debt and damages aforesaid, whereof he was convicted, and that he should

Plea to a *scire facias*, that a *capias ad satisfaciendum* was sued out, and the defendant taken in execution.

have then here the writ aforesaid; which said writ of *capias ad satisfaciendum* the said *John* afterwards, to wit, on the 12th day of *May* in the 11th year aforesaid, at *B.* in the county aforesaid, delivered to *E. P.* esq; being then sheriff of the county aforesaid, in form of law to be executed; by virtue of which said writ of *capias ad satisfaciendum* the said *E. P.* esq; being then as aforesaid sheriff of the county of *Cornwall*, afterwards and before the return of that writ, to wit, on the 11th day of *June* in the 11th year aforesaid, took and arrested the said *Thomas* at *B.* aforesaid in the county aforesaid, and him the said *Thomas* in his custody in execution for the debt and damages aforesaid then and there had and detained, until the said *Thomas* afterwards, to wit, on the 20th day of *June* in the 11th year aforesaid, at *B.* aforesaid in the county aforesaid, paid and satisfied the said *John* the debt and damages aforesaid: and this he is ready to verify: wherefore he prays judgment if the said *John* ought to have his execution against him for the debt and damages aforesaid, &c.

[656]

Repl', no ca.
fa. sued out.

And the said *John* says, that he by any thing by the said *Thomas* above in pleading alledged ought not to be precluded from having his execution against him for the debt and damages aforesaid, because he says, that he the said *John* did not prosecute any writ of *capias ad satisfaciendum* against the said *Thomas*, as the said *Thomas* hath above in pleading alledged: and this he prays may be inquired of by the country.

The tertenant
pleads that he
is not tenant of
the premises.

AND the said *J. C.* by *J. L.* his attorney comes and says, that the said *J. B.* and *Anne* his wife ought not to have their execution against him for the debt and damages aforesaid on the messuage aforesaid in the parish of *St. Bennet Grace-church* in the *Bridge ward, London*, in the possession of him the said *J. C.* in the return of the writ of *scire facias* aforesaid mentioned, because he says, that before the judgment aforesaid in the said writ mentioned was given, to wit, on the 15th day of *March* in the 21st year of the reign of the lord *Charles* the Second, late king of *England*, &c. the said *James B.* in the judgment in the writ of *scire facias* aforesaid mentioned was seised in his demesne as of fee of and in one toft with the appurtenances in the parish and ward aforesaid (being the toft on which the messuage in the return of the writ of *scire facias* aforesaid mentioned to be in the possession of him the said *J. C.* was afterwards built) and the said *James* being so thereof seised, by a certain indenture made on the said 15th day of *March* in the 21st year of the late king *Charles* the Second aforesaid, between the said *James B.* by the name of *J. B.* of *London*, knt. and bart. and *John B.* the son and heir apparent of the said *J. B.* by the name of *J. B.* of *O.* in the county of *Kent*, esq; son and heir apparent of the said *J. B.* of the one part, and *Richard S.* gent. by the name of *R. S.* of the *Middle Temple, London*, gent. of the other part, one part of which said indenture sealed with the seals

of them the said *James B.* and *John B.* the same *J. C.* here in court produces, for and in consideration of the sum of 700 *l.* of lawful money of *England*, by him the said *Richard S.* to them the said *James B.* and *John B.* in hand paid, did demise, grant, bargain and sell; and the said *John B.* did confirm to the said *Richard S.* among other things, the toft aforesaid on which the messuage in the possession of him the said *J. C.* in the return of the writ of *scire facias* aforesaid mentioned, was afterwards built, by the name of all that toft or void piece of land very lately a messuage or tenement with the appurtenances thereto belonging, (destroyed by the then late dreadful fire in *London*) and then lately called or known by the name or sign of the *Red Lyon* in *Gracechurch-street*; to have and to hold the toft aforesaid with the appurtenances (among other things) to the said *Richard S.* his executors, administrators and assigns, from and immediately after the day of the date of the indenture aforesaid for and during and unto the full end and term of 500 years from thence next ensuing; yielding and paying yearly and every year, during the term aforesaid, to the said *James B.* and his heirs on the birth of our Lord Christ a pepper corn, if it should be lawfully demanded, as by the indenture aforesaid more fully appears: by virtue of which said demise the same *Richard S.* afterwards, to wit, on the first day of *May* in the 21st year of the reign of the lord *Charles* the Second, late king of *England*, &c. abovesaid, into the toft aforesaid with the appurtenances entred, and was thereof possessed; and being so thereof possessed afterwards, to wit, on the first day of *May* in the 25th year of the reign of the late lord king *Charles* the Second, on the toft aforesaid did build the messuage aforesaid in the return of the writ of *scire facias* aforesaid mentioned to be in the possession of the said *J. C.* And the same *J. C.* farther says, that the said *Richard* being so as aforesaid possessed of the messuage aforesaid with the appurtenances, afterwards, to wit, on the first day of *May* in the year of the Lord 1684, demised the messuage aforesaid with the appurtenances to the said *J. C.* To have and to hold to the said *J. C.* from the feast of *St. John* the baptist then next ensuing for one whole year, and so from year to year as long as both parties should please; yielding and paying therefore to the same *Richard* the yearly rent of 60 *l.* By virtue of which said demise the same *J. C.* into the messuage aforesaid with the appurtenances entred, and was and yet is thereof possessed; without that, that the said *J. C.* on the day of the issuing of the said writ of *scire facias*, or ever after, was tenant as of freehold of the messuage aforesaid with the appurtenances, as by the return of the said writ of *scire facias* is supposed: and this he is ready to verify: wherefore he prays judgment if the said *John B.* and *Anne* ought to have execution against him for the debt and damages aforesaid on the messuage aforesaid with the appurtenances, &c.

A *scire facias* on a judgment on a recognisance on a *capias* out of C. B. after a writ of error.

G E O R G E, &c. To the sheriff of *Middlesex*, greeting: whereas *William F.* of, &c. and *John B.* of, &c. on the first day of *March* in the first year of our reign, came before *Robert T.* esq; one of our justices of the bench, at his chambers situate in *Serjeants-Inn* in *Fleet-street*, *London*, and did acknowledge, and each of them separately by himself did acknowledge he owed to *John F.* the sum of 100*l.* to be levied on their and each of their lands and chattels, which said recognisance in form aforesaid taken, the same justice afterwards, to wit, on the fourth day of *May* in *Easter* term in the first year of our reign aforesaid into our said court of the bench aforesaid, to wit, at *Westminster* in the county aforesaid, by his own proper hands delivered in the same court on record to be inrolled; and there in the same *Easter* term before *Peter K.* knt. and his companions our justices of the bench aforesaid it is inrolled, which said 100*l.* the said *William* and *John* to the same *John F.* have not yet paid, nor hath either of them paid; whereon in our same court it is considered, that the said *John F.* may have thereof his execution against the said *William* and *John* for the debt aforesaid, according to the form of the recognisance aforesaid, as by the record and proceedings aforesaid; which we lately caused to be brought into our court before us for certain causes of error, appears to us on record: and now on the behalf of the said *John F.* we have in our court before us understood, that although judgment thereon is given, execution nevertheless of that judgment yet remains to be made: wherefore the same *John* hath besought us to grant him his proper remedy in this behalf: we therefore being willing that what is just in this behalf should be done, command you that by good and lawful men of your bailiwick you give notice to the said *William* and *John* that they be before us on the morrow of the holy *Trinity*, wheresoever we shall then be in *England*, to shew, if they have or can say any thing for themselves, why the said *John F.* ought not to have his execution against them for the debt aforesaid, according to the force, form and effect of the recovery aforesaid if they shall think fit; and further to do and receive what our same court before us shall then and there consider concerning them in this behalf; and have there the names of those by whom you shall give them notice, and this writ. *Witness, &c.*

A *scire facias* against one of the bail in an action of debt.

G E O R G E, &c. To the sheriff of *Middlesex*, greeting: whereas *James A.* gent. lately in our court before us at *Westminster* by bill without our writ, and by the judgment of the same court recovered against *John C.* esq; otherwise called, &c. and *Thomas H.* esq; otherwise called, &c. 800*l.* debt, and also 53*s.* for his damages which he sustained, as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the same *John* and

and *Thomas* are convicted, as it appears to us on record; and although judgment thereof is given, execution nevertheless for the debt and damages aforesaid yet remains to be made: and whereas *George W.* of the *Poultry, London*, gent. otherwise, to wit, in *Michaelmas* term in the third year of our reign before us at *Westminster* personally came and became pledge and bail for the said *John*, that if it should happen that the said *John* should be convicted at the suit of the said *James* in the plea aforesaid, then the same bail granted that as well the debt aforesaid as all such damages, costs and charges as should be adjudged to the said *James* in that behalf should be made of his lands and chattels, and levied to the use of him the said *James*, if it should happen that the said *John* should not pay the debt and those damages, costs and charges to the said *James*, or should not surrender himself to our prison to the marshal of the *Marshalsea* before us on that account, which said debt, and the damages, costs and charges are not paid to the said *James*, nor hath the said *John* surrendered himself to our prison to the marshal of the *Marshalsea* aforesaid before us, as by the suggestion of the said *James* we have in our court before us understood: wherefore the said *James* hath besought us to grant him his proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you that by good and lawful men of your bailiwick you give notice to the said *George* that he be before us at *Westminster* on *Wednesday* next after three weeks of *St. Michael* to shew, if he hath or can say any thing for himself, why the said *James* ought not to have his execution against him for the debt and the damages, costs and charges aforesaid, according to the force, form and effect of the recognisance aforesaid, if he shall think fit, and further to do and receive, &c.

G E O R G E, &c. To the sheriff of *Lincoln*, greeting:
whereas *Rebecca H. Robert* and *Sarah* his wife, and *Elizabeth H.* lately in the court of the lady *Anne*, late queen of *Great Britain*, &c. before *Thomas Trevor* baron of *Bromham*, and his companions, justices of the same late lady the queen of the bench at *Westminster*, by the judgment of the same court recovered against *Edmund H.* bart. 122 l. to the same *Rebecca, Robert* and *Sarah* his wife, and *Elizabeth*, according to the form of the statute in such case thereof lately made and provided, adjudged for their costs and charges by them about their defence in a certain plea on a certain writ of the said late lady the queen, of *formedon* in remainder of the manor of *H.* with the appurtenances, and the rectory of *H.* with the appurtenances in your county sustained, whereof the said *Edmund H.* bart. is convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court before us for certain causes of error, appears to us on record; and now on the behalf of the said *Rebecca, Robert*, and *Sarah* his wife, and *Elizabeth* in our court before us, we have understood that although judgment aforesaid

[658]

A scire facias
quare executionem non for damages on a judgment in formedon removed by writ of error out of C. B. into K. B.

aforesaid in form aforesaid is given, execution nevertheless of that judgment yet remains to be made for them; wherefore the same *Rebecca*, *Robert* and *Sarah* his wife, and *Elizabeth* have besought us to grant them a proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you that by good and lawful men of your bailiwick you give notice to the said *Edmund H.* bart. that he be before us from the day of *Easter* in 15 days to shew if he hath or can say any thing for himself why the said *Rebecca*, *Robert* and *Sarah* his wife, and *Elizabeth*, ought not to have their execution for their costs and charges aforesaid against the same *Edmund H.* bart. according to the force, form and effect of the recovery aforesaid, if he shall think fit, and further, &c.

A scire facias
for an executor
for costs, on
quashing a writ
of error on a
judgment ob-
tained by the
testator.

A N N E, &c. To the sheriff of *Middlesex*, greeting: whereas *Ambrose C.* knt. lately in our court before us at *Westminster*, by the consideration of the same court; recovered against *Joseph P.* late of, &c. and *R. S.* late of, &c. 10 l. which to the same *Ambrose* in our court before us at *Westminster*, according to the form of the statute in such case lately made and provided were adjudged for his damages, costs and charges which he sustained by reason of the delay of execution of a certain judgment on a certain recognisance in our court before our justices of the bench at *Westminster* against them recovered, on pretence of the prosecution of a certain, vicious and defective writ of error which we lately caused to be brought before us at *Westminster*, for that reason there quashed now remaining, as it appears to us on record: and now in our court before us we have understood that the said *Ambrose C.* knt. made his last will and testament, and by the same constituted and ordained *John C.* esq; his son, executor of his will aforesaid, and afterwards died; and although judgment thereof is given, execution nevertheless for the damages and costs aforesaid yet remains to be made; wherefore the same *John C.* hath besought us to grant him his proper remedy in this behalf; and we in this behalf being willing that what is just should be done, command you that by good and lawful men of your bailiwick you give notice to the said *J.* and *R.* that they be before us on _____ wheresoever we shall then be in *England*, to shew if they have or can say any thing for themselves why the said *John C.* ought not to have execution against them for the damages, costs and charges aforesaid, according to the force, form and effect of the recovery aforesaid, if they shall think fit; and further, &c.

A scire facias
for a surviving
plaintiff.

A N N E, &c. To the sheriff of *Sussex*, greeting: whereas *John A.* and *Arthur B.* lately in the court of the lord *William* the Third, the late king, before the late king himself at *Westminster*, by bill, without the writ of the said late king, and by the judgment of the same court, recovered against *James B.* 10 l.

10*l.* debt, and 70*s.* for his damages which he ſuſtained as well by reaſon of the detention of that debt as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſame *James* is convicted, as it appears to us on record; and whereas the ſaid *J. A.* afterwards died, and the ſaid *Arthur* ſurvived him: and now on the behalf of the ſaid *Arthur* in our court before us we have underſtood, that although judgment thereof is given, execution nevertheless for the debt and damages aforeſaid yet remains to be made; wherefore the ſame *Arthur* hath beſought us to grant him his proper remedy in this behalf; and we being willing that what is juſt in this behalf ſhould be done, command you, that by good and lawful men of your bailiwick you give notice to the ſaid *James* that he be before us at *Weſtminſter* on *Thursday* next after the morrow of *All Souls*, to ſhew if he hath or can ſay any thing for himſelf, why the ſaid *Arthur* ought not to have execution againſt him for the debt and damages aforeſaid, according to the force, form and effect of the recovery aforeſaid, if he ſhall think fit, and farther, &c.

[659]

WILLIAM, &c. To the ſheriff of *Suffex*, greeting: whereas *Stephen W.* lately in our court before us at *Weſtminſter*, by bill, without our writ, and by the judgment of the ſame court, recovered againſt *James G. gent.* 100*l.* debt, and alſo 63*s.* for his damages which he ſuſtained as well by reaſon of the detention of that debt, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *James* was convicted, as it appears to us on record: and afterwards the ſaid *James* at *Lewes* aforeſaid in the county aforeſaid made his laſt will and teſtament in writing, and by the ſame conſtituted *N. T. gent. C. F. gent. and J. W. gent.* executors thereof, and afterwards there died, the ſaid *Stephen* being not paid the debt and damages aforeſaid: and now on the behalf of the ſaid *Stephen* in our court before us we have underſtood, that altho' the judgment aforeſaid is given, execution nevertheless of that judgment yet remains to be made for him; wherefore the ſame *Stephen* hath beſought us to grant him his proper remedy in this behalf: and we being willing that what is juſt in this behalf ſhould be done, command you, that by good and lawful men of your bailiwick you give notice to the ſaid *N. C. and J.* that they be before us at *Weſtminſter* on _____ day next after _____ to ſhew, if they have or can ſay any thing for themſelves, why the ſaid *Stephen* ought not to have his execution againſt them for the debt and damages aforeſaid of the goods and chattels which belonged to the ſaid *James* at the time of his death in their hands to be adminiſtred, according to the force, form and effect of the recovery aforeſaid, if they ſhall think fit, and farther, &c.

A ſcirs facias
againſt executors
where the de-
fendant died
after judgment
recovered.

A scire facias
against the ter-
tenants after
judgment re-
covered in the
time of the late
king.

ANNE, &c. To the sheriffs of *London*, greeting: whereas *Charles P.* gent. lately in the court of the lord *William* the Third, late king of *England*, before the late king himself at *Westminster*, by bill, without the writ of the said late king, and by the judgment of the same court, recovered against *Jeffery B.* of *Grays-Inn* in the county of *Middlesex*, otherwise called, &c. 400 *l.* debt, and also 4 *l.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *Jeffery* is convicted, as it appears to us on record; and the said *Jeffery* after the judgment aforesaid in form aforesaid given is dead, and died seised in his demesne as of fee of sundry lands and tenements in your bailiwick, as by the suggestion of the said *Charles* in our court before us we have understood; and altho' the judgment aforesaid is given, execution nevertheless of that judgment yet remains to be made, as by the suggestion of the said *Charles* in our said court before us we have likewise understood; wherefore the same *Charles* hath besought us to grant him his proper remedy in this behalf: and we being willing that what is just should be done in this behalf, command you, that by good and lawful men of your bailiwick you give notice to the tenants of all the lands and tenements in your bailiwick, whereof the said *Jeffery*, or any other person or persons, was or were seised to the use of the said *Jeffery*, on *Monday* next after the octave of *St. Hilary* in the 10th year of the reign of the said lord *William* the Third, late king of *England*, &c. on which day the judgment aforesaid was given, or ever after, that they be before us at *Westminster* on day next after to shew, if they have or can say any thing for themselves, why the said *Charles* ought not to have his execution against them for the debt and damages aforesaid, to be levied on those lands and tenements, according to the force, form and effect of the recovery aforesaid, if they shall think fit, and farther, &c.

A scire facias
after a year and
a day on a
judgment for
the defendant in
ejectment.

[660]

WILLIAM, &c. To the sheriff of *Norfolk*, greeting: whereas *Richard J.* lately in our court before us at *Westminster*, by bill, without our writ, impleaded *John C.* esq; in a plea of trespass and ejectment for the recovery of the possession of several messuages, lands and tenements with the appurtenances in *W.* and *W.* in your county, in which said suit it was considered, that the said *Richard* should take nothing by his bill aforesaid, but should be in mercy for his false claim: it was likewise considered, that the said *John C.* should recover against the said *Richard* 106 *l.* for his costs and charges by him sustained about his defence in that suit, to him according to the form of the statute in such case made and provided adjudged, whereof the same *Richard* is convicted, as it appears to us on record: and now on the behalf of the said *John C.* in our court before us we have understood,

understood, that altho' judgment thereof is given, execution nevertheless for the said 106*l.* for the costs and charges aforesaid yet remains to be made for him; wherefore the same *J.* hath besought us to grant him his proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *R. J.* that he be before us at *Westminster* on _____ day next after _____ to shew, if he hath or can say any thing for himself, why the said *J.* ought not to have execution against him for the said 106*l.* according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther, &c.

A N N E, &c. To the sheriff of *Kent*, greeting: whereas in the record and proceedings, and also in the adjudication of execution on a precept of *scire facias* issuing out of the court of the lord *William* the Third, late king of *England*, of the town and parish of *M.* against *James B.* the bail of *James D.* in a plaint of debt of 120*l.* against the said *James D.* and *John A.* in the court of the said late king and the lady *Mary* late queen of *England* of the town and parish of *M.* aforesaid, before the then mayor of the town and parish of *M.* aforesaid levied, on which said plaint judgment in the said court of the said late king and of the said late queen of the town and parish of *M.* aforesaid is given against the said *James D.* for the said 120*l.* debt, and also 58*s.* 2*d.* for damages by reason of the detention of that debt, as it is said, a manifest error hath happened, to the great damage of him the said *James B.* as by his complaint we have understood, the record and proceedings of which said judgment we have lately caused to be brought before us for certain causes of error, appears to us on record; and the said *James B.* hath thereon duly assigned his errors on record, as by the inspection of the record thereof doth likewise appear to us on record: therefore we command you, that by good and lawful men of your bailiwick you give notice to the said *John A.* that he be before us wheresoever we shall then be in *England*, to hear the record and proceedings aforesaid, if he shall think fit, and farther, &c.

A scire facias to hear errors on a judgment on a scire facias out of the court of the town of M.

W I L L I A M and *Mary*, &c. To the sheriffs of the city of *Bristol*, greeting: whereas *Marmaduke B.* lately in our court of the *Tolfel* of the city aforesaid, held in the antient market of the same city, according to the law of merchants, and according to the use and custom of the city aforesaid, for time immemorial used and approved in the same, and according to the liberties and privileges of the mayor and commonalty of the same city, by divers charters of our progenitors to the mayor and commonalty of the said city granted, and by us lately confirmed before *J. B.* and *W. O.* esq; as well sheriffs of the city aforesaid, as the bailiff, mayor and commonalty of the same city, without our

A scire facias on a judgment in the court of the Tolfel of the city of Bristol removed by error into K. B.

our writ, and by the judgment of the same court, recovered against *William C.* 29 *l.* 19 *s.* 6 *d.* for his damages which he sustained as well by reason of certain trespasses on the case to the same *Marmaduke* by the said *William* done, as for his costs and charges by him about his suit in that behalf expended, whereof the said *William* is convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court before us for certain causes of error, appears to us on record: and now on the behalf of the said *Marmaduke* in our court before us we have understood, that altho' judgment aforesaid in form aforesaid is given, execution nevertheless for the damages aforesaid yet remains to be made for him: wherefore,
Ec.

[661]
A scire facias
 to hear errors in
 the exchequer
 chamber.

A N N E, &c. To the sheriffs of *London*, greeting: because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before us by bill, between *John S.* gent. administrator of the goods and chattels which belonged to *John G.* with the will of the said *John G.* thereto annexed, unadministred by one *Thomas S.* now deceas'd, late administrator of the goods and chattels of the said *J. G.* with the will annexed, and *Isaac D.* merchant, otherwise called, &c. for this, that the same *Isaac* should render to the said administrator 307 *l.* as it is said, a manifest error hath happened, to the great damage of the said administrator, as by his complaint we have understood, the record and proceedings of which said judgment we have caused to be brought into our exchequer chamber before our justices of the common bench and the barons of our exchequer, who are of the degree of the coif, to correct the errors in the same, according to the form of the statute of the 27th year of the lady *Elizabeth* the late queen thereof provided: and because the same *John S.* hath duly assigned errors on record upon the judgment aforesaid: therefore we command you that by good and lawful men of your bailiwick you give notice to the said *Isaac D.* that he be before our justices of the common bench and the barons of our exchequer aforesaid, in our exchequer chamber aforesaid, on *Saturday* the 28th day of *October* next ensuing, to hear the record and proceedings aforesaid if he shall think fit; and further to do and receive what the same justices and barons shall consider in this behalf; and have there the names of those by whom you shall give him notice, and this writ. Witness *Thomas Trevor*, knt. at *Westminster* the fourth day of *July* in the third year of our reign.

A scire facias
quare executionem
non, in replevin.

A N N E, &c. To the sheriff of *Northampton*, greeting: whereas *Samuel C.* lately in our court before *Thomas T.* knt. and his companions our justices of the bench at *Westminster* by our writ, and by the judgment of the same court hath recovered against *John B.* 16 *l.* 17 *s.* 6 *d.* for his damages which he sustained,

tained, as well by reason of the taking and unjust detention of the mare of him the said *Samuel* as for his costs and charges by him about his suit in that behalf expended; whereof the same *John* is convicted, as by the inspection of the record and proceedings thereof which we lately caused to be brought into our court before us for certain causes of error appears to us on record: and now on the behalf of the said *Samuel* in our court before us we have understood, that although judgment aforesaid in form aforesaid is given, execution nevertheless of that judgment yet remains to be made for him; wherefore the same *Samuel* hath besought us to grant him his proper remedy in this behalf; and we being willing that what is just in this behalf should be done, command you that by good and lawful men of your bailiwick you give notice to the said *John* that he be before us on wheresoever we shall then be in *England*, to shew if he hath or can say any thing for himself why the said *Samuel* ought not to have his execution for the damages aforesaid against the said *John*, according to the force, form and effect of the recovery aforesaid, if he shall think fit; and further, &c.

WILLIAM, &c. To the sheriff of *York*, greeting: whereas *George T.* lately in our court before *E. N. knt.* and *J. B. knt.* our justices of the bench at *Westminster*, by our writ, and by the judgment of the same court hath recovered against *James R.* late of *Brusbes* in your county, yeoman, his term yet to come of and in one messuage 15 acres of land, 10 acres of meadow, and 10 acres of pasture, with the appurtenances in the parish of *E.* in your county, which *William M.* on the 20th day of *October* in the 12th year of our reign, demised to the same *George* to have and to hold to the same *George* and his assigns, from the 19th day of the same month of *October* then last past, unto the full end and term of five years from thence next ensuing and fully to be compleat and ended, by virtue of which said demise the same *George* into the tenements aforesaid with the appurtenances enter'd and was thereof possessed, until the said *James* afterwards, to wit, on the same 20th day of *October* in the 12th year above said, with force and arms, &c. into the tenements aforesaid with the appurtenances, which the said *William M.* to the same *George* in form aforesaid demised for the term aforesaid which is not yet ended, entred, and him the said *George* from his farm aforesaid ejected, and also 11 l. 6 s. 6 d. for his damages which he sustained, as well by reason of the trespass and ejectment aforesaid, as for his costs and charges by him about his suit in that behalf expended, whereof the said *James* is convicted, as by the record and proceedings thereof which we lately caused to be brought into our court before us for certain causes of error appears to us on record: and now on the part of the said *George*, we have in our court before us understood, that altho' the judgment aforesaid in form aforesaid is given, execution nevertheless of that judgment yet remains to be made for him;

A scire facias
quare possessionem non, on a
judgment in
ejectment re-
moved out of
C. B. by error.

him; wherefore the same *George* hath besought us to grant him his proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *James*, that he be before us on _____ wheresoever, &c. to shew, if he hath or can say any thing for himself, why the said *George* ought not to have his possession of his term aforesaid yet to come of and in the tenements aforesaid with the appurtenances, and also execution for the damages, costs and charges aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our same court before us shall then and there consider concerning him in this behalf; and have there the names of those by whom you shall give him notice, and this writ. Witness, &c.

A testatum scire
facias against
tertenants
brought by an
executor.

WILLIAM, &c. To the sheriff of *Suffex*, greeting: whereas *T. W.* esq; lately in the court of the lord *Charles* the Second, late king of *England*, before the late king himself at *Westminster*, by bill, without the writ of the said late king, and by the judgment of the same court, recovered against *N. P.* otherwise called, &c. 300 *l.* debt, and also 2 *s.* for his damages which he sustained as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the same *N.* is convicted, as it appears to us on record; and as well the said *N.* as the said *T.* after the judgment aforesaid in form aforesaid recovered are dead, as by the suggestion of *A. W.* esq; the executor of the last will and testament of the said *T. W.* we have in our court before us understood; wherefore the same *A.* hath besought us to grant him his proper remedy in this behalf: and because we are willing that those things which are lawfully transacted in our said court should be carried into due execution, we lately commanded our sheriffs of *London*, that by good and lawful men of their bailiwick they should give notice to the heirs and tenants of all the lands and tenements in their bailiwick, whereof the said *N.* or any person or persons to the use of the said *N.* was or were seised on *Friday* next after the morrow of the holy *Trinity* in the 17th year of the reign of the late lord king *Charles* the Second, on which day the judgment aforesaid was given, or ever after was seised, that they should be before us at *Westminster* on *Tuesday* next after 15 days of *St. Martin*, to shew, if they had or could say any thing for themselves, why the debt and damages aforesaid ought not to be levied on those lands and tenements, and paid to the said *A.* according to the force, form and effect of the recovery aforesaid, if they should think fit, and farther to do and receive what our court before us should then and there consider concerning them in this behalf; and that they should have there then the names of those by whom they should give them notice, and that writ. And our said sheriffs of *London* on that

that day returned to us, that there are no heirs nor tenants, neither is there any heir or tenant of any lands or tenements whereof the said *N.* was seised in his bailiwick the day on which the judgment aforesaid was given, or ever after, to whom they could give notice : and now on the behalf of the said *N.* in our court before us it is sufficiently testified, that there are several tenants of sundry lands and tenements which were the said *N.*'s at the time of the judgment aforesaid given, and afterwards in your county, to whom you may give notice : we therefore command you, that by good and lawful men of your bailiwick you give notice to the tenants of the lands and tenements which were the said *N.*'s in your bailiwick of which the said *N.* or any person or persons to the use of the said *N.* was or were seised on the said *Friday* next after the morrow of the holy *Trinity* in *Trinity* term in the 17th year of the reign of the said late lord king *Charles* the Second, on which day the judgment aforesaid was given, or ever after, that they be before us at *Westminster* on *Tuesday* next after the octave of *St. Hilary*, to shew, if they have or can say any thing for themselves, why the debt and damages aforesaid ought not to be levied on those lands and tenements, and paid to the said *A.* according to the force, form and effect of the recovery aforesaid, if they shall think fit, and farther to do and receive, &c.

WILLIAM, &c. To our chamberlain of our county palatine of *Chester*, or to his deputy there in this behalf, greeting : whereas *R. S.* lately in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, hath recovered against *W. E.* 39*l.* 6*s.* for his damages which he sustained as well by reason of the non-performance of certain promises and assumptions to the same *R.* by the said *W.* lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the same *W.* is convicted, as it appears to us on record : and now on the behalf of the said *R.* in our court before us we have understood, that altho' judgment thereof is given, execution nevertheless for the damages aforesaid yet remains to be made : wherefore the same *R.* hath besought us to grant him his proper remedy in this behalf : and we being willing that what is just in this respect should be done, command you, that by our writ under the seal of our county palatine aforesaid duly to be made, and to the sheriff of the same county to be directed, you cause the same sheriff to be commanded, that by good and lawful men of his bailiwick he give notice to the said *William* that he be before us at *Westminster* on _____ day next after _____ to shew, if he hath or can say any thing for himself, why the said *Robert* ought not to have his execution against him for the damages, costs and charges aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our court before us shall then and there consider concern-

A scire facias in eade quare executionem non directo to the chamberlain of the county palatine.

[653]

ing him in this behalf; and have there then the names of those by whom he shall give him notice, and this writ. Witness, &c.

A fieri facias
to hear errors
on a judgment
in the C. B. for
words.

ANNE, &c. To the sheriff of *Hereford*, greeting: because in the record and proceedings, and also in the rendition of the judgment of a plea which was in our court before *Thomas T.* knt. and his companions, our justices of the bench, by our writ, between *Joyce L.* widow, plaintiff, and *Roger L.* otherwise *L.* late of *Brinsop* in the county aforesaid, yeoman, and *Mary* his wife, defendants, of a certain trespass on the case to her the said *Joyce* by them the said *Roger* and *Mary* done, whereof the same *Roger* and *Mary* are convicted, as it is said, a manifest error hath happened, to the great damage of them the said *Roger* and *Mary*, as we have by their complaint understood, the record and proceedings of which said judgment we have lately caused to be brought before us for certain causes of error: and because the said *Roger* and *Mary* have duly assigned errors on record upon the judgment aforesaid, and we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, as is reasonable, command you, that by good and lawful men of your bailiwick you give notice to the said *Joyce*, that she be before us on the octave of *St. Hilary*, wheresoever we shall then be in *Great Britain*, to hear the record and proceedings aforesaid, if she shall think fit, and farther to do and receive what our court before us shall then and there consider concerning her in this behalf; and have there the names of those by whom you shall give her notice, and this writ. Witness, &c.

Sci' fier' Inquir'.

[664]

A fieri facias
against an admin-
istrator in debt
after judgment
affirmed in
error, in order
to sue out a
sci' fier' inquir'.

GEORGE, &c. To the sheriff of *Middlesex*, greeting: we command you, that of the goods and chattels which belonged to *Gilbert N.* esq; who died intestate, as it is said, lately called *Gilbert N.* of *Hopton* in the parish of *Avenbury* in the county of *Worcester*, esq; at the time of his death in the hands and custody of *George B. D.* late of *Westminster*, esq; administrator of the goods and chattels which belonged to the said *Gilbert* at the time of his death, to be administered in your bailiwick you cause to be made 1200*l.* debt which *Grimbald P.* esq; lately in the court of the lady *Anne* late queen of *Great Britain*, &c. before the justices of the same late queen of the bench at *Westminster* recovered against him the said *George B. D.* and also 50*s.* which to the same *Grimbald* in the same court of the said late queen were adjudged for his damages which he sustained by reason of the detention of that debt, if he hath so much there-

of in his hands ; and if he hath not so much thereof in his hands, then the damages aforesaid of the proper goods and chattels of him the said *George B. D.* whereof the said *George B. D.* is convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court before us, by virtue of our certain writ of error by the said *George B. D.* of and upon the premisses prosecuted, and which in our same court before us in all things affirmed now remain, appears to us on record; and have that money before us from the day of *Easter* in five weeks, wheresoever we shall then be in *England*, to be paid to the said *Grimbald* for the debt and damages aforesaid; and have there then this writ, Witness, &c.

GEORGE, &c. To the sheriff of *Middlesex*, greeting: The sci' fier^r
inquir'.
whereas we lately commanded you by our writ, that of the goods and chattels which belonged to *Gilbert N. esq;* who died intestate, as it is said, lately called *Gilbert N. of Hopton* in the parish of *Avenbury* in the county of *Worcester*, esq; at the time of his death in the hands and custody of *George B. D. late of Westminster*, esq; administrator of the goods and chattels which belonged to the said *Gilbert* at the time of his death to be administered, you should cause to be made, 1200*l.* debt, which *Grimbald P. esq;* lately in the court of the lady *Anne* late queen of *Great Britain*, &c. before the justices of the said late queen of the bench at *Westminster*, had recovered against him the said *George B. D.* and also 50*s.* which to the same *Grimbald* in the same court of the said late queen had been adjudged for his damages which he had sustained by reason of the detention of that debt, if he had so much thereof in his hands; and if he had not so much in his hands, then the damages aforesaid of the proper goods and chattels of him the said *George B. D.* whereof the said *George B. D.* is convicted, as by the inspection of the record and proceedings thereof which we lately caused to be brought into our court before us, by virtue of our certain writ of error by the said *George B. D.* of and upon the premisses prosecuted, and which in our same court before us in all things affirmed now remain, appears to us on record; and that you should have that money before us from the day of *Easter* in five weeks, wheresoever we should then be in *England*, to be paid to the said *Grimbald* for the debt and damages aforesaid; and you on that day returned to us, that *George B. D.* hath no goods or chattels which belonged to the said *Gilbert N.* at the time of his death in his hands to be administered, whereof you can cause to be made the debt and damages aforesaid, or any part thereof, nor any goods or chattels of his own whereof you can cause to be made the damages aforesaid, or any part thereof: and because the return aforesaid is thought to be in delay of the execution of the debt and damages aforesaid, and also because in our same court before us on the behalf of the said *Grimbald* it is sufficiently testified, that several goods and chattels which belonged to the said

[665]

Gilbert at the time of his death came to the hands and possession of the said *George B. D.* after the death of him the said *Gilbert* to be administered, and that he the same *George B. D.* hath sold and wasted those goods and chattels, and the money thereby received to his own proper use hath converted and disposed, and the residue of the goods and chattels which belonged to the said *Gilbert* at the time of his death have been by the said *George B. D.* cloined, to the intent that the execution aforesaid should not be executed: and we being unwilling that those things which are lawfully transacted or adjudged in our same court should be render'd ineffectual by fraud or subtilty, command you, that of the goods and chattels which belonged to the said *Gilbert* at the time of his death in the hands of the said *George B. D.* to be administered in your bailiwick, you cause to be made the debt and damages aforesaid, if they can be levied thereon; and the money thereon levied have before us on the morrow of the holy *Trinity*, wheresoever we shall then be in *England*, to be paid to the said *Grimbald* for the debt and damages aforesaid; and if they cannot be levied thereon, then if it shall appear to you by the inquisition of good and lawful men of your bailiwick in this behalf to be taken, or in any other manner by which you may be better certified therein, that the said *George B. D.* hath sold, eloined, wasted, or to his own proper use converted or disposed the goods and chattels which belonged to the said *Gilbert* at the time of his death in the hands of the said *George B. D.* to be administered, to the value of the debt and damages aforesaid, or any part thereof, that then by good and lawful men of your bailiwick you give notice to the said *George B. D.* that he be before us on the morrow of the holy *Trinity* aforesaid, to shew, if he hath or can say any thing for himself, why the said *Grimbald* ought not to have his execution against him for the debt and damages aforesaid of the proper goods and chattels of him the said *George B. D.* if he shall think fit, and farther to do and receive what our court before us shall then consider concerning him in this behalf; and have there then the names of those by whom you shall give him notice, and this writ. Witness *J. Pratt*, knt, at *Westminster* 4th day of *May* in the 4th year of our reign.

*A scire facias
quare executionem
non on a
judgment for
the defendant
in C. B. on a
writ of error.*

GEORGE, &c. To the sheriff of *London*, greeting:
whereas *William F.* late of the parish of *St. Saviour Southwark* in the county of *Surry*, dyer, administrator of all and singular the goods and chattels, rights and credits, which belonged to *William N.* late of the parish of *St. Stephen Coleman-street*, *London*, packer, deceased, at the time of his death, who died intestate, lately in our court before *Peter K.* knt. and his companions, our justices of the bench at *Westminster*, recovered against *William W.* 15*l.* 10*s.* to the same *William F.* according to the form of the statute in such case made and provided, adjudged for his costs and charges by him in a certain plea of trespass

pass on the case sustained, whereof the same *William W.* is convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our court before us for certain causes of error, appears to us on record: and now on the behalf of the said *William F.* in our court before us we have understood, that altho' judgment thereof is given, execution nevertheless for the said 16*l.* 10*s.* for his costs and charges aforesaid yet remains to be made for him; wherefore the same *William F.* hath besought us to grant him his proper remedy in this behalf: and we being willing that what is just in this behalf should be done, command you, that by good and lawful men of your bailiwick you give notice to the said *William W.* that he be before us from the day of *St. Michael* in three weeks, wheresoever we shall then be in *England*, to shew, if he hath or can say any thing for himself, why the said *William F.* ought not to have his execution against him the said *William W.* for the said 16*l.* 10*s.* according to the force, form and effect of the recovery aforesaid, if he shall think fit, and farther to do and receive what our court before us shall consider concerning him in this behalf; and have there the names of those by whom you shall give him notice, and this writ. Witness *J. Pratt*, knt. at *Westminster*, &c.

England, **T**HE lord the king sent to the sheriffs of *London* his to wit. writ close in these words, to wit, *William*, &c. To the sheriffs of *London*, greeting: whereas we lately commanded you by our writ, that of the goods and chattels which belonged to *Edward B.* deceased, at the time of his death in the hands and custody of *John B.* administrator of all and singular the goods and chattels, rights and credits which belonged to the same *Edward* at the time of his death, who died intestate in your bailiwick, you should cause to be made 400*l.* debt, which *E. C.* lately in our court before us at *Westminster* recovered against the same *E. B.* and also 5*l.* which to the same *E. C.* in our same court before us were adjudged for his damages which he sustained as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the same *E. B.* in his life-time was convicted, as it appears to us on record; and whereon in our same court before us it is lately considered that the said *E. C.* may have his execution against the said *J.* for the debt and damages aforesaid, to be levied on the goods and chattels which belonged to the said *E. B.* at the time of his death, being in the hands of the said *J.* to be administered, as it likewise appears to us on record; and should have that money before us at *Westminster* on *Wednesday* next after 15 days of *Easter*, to be paid to the said *E. C.* for the debt and damages aforesaid: and whereas we likewise commanded you by our writ aforesaid, that of the goods and chattels which belonged to the said *J.* in your bailiwick you should cause to be made 7*l.* 10*s.* which to the same *E. C.* in our said court before us at *Westminster*, according to the form of the statute in such

[666]

A *scir' fac'*
inquir.
Recital of the
fi. fa.

The judgment
against the in-
testate.

Scir' fac. against
the administra-
tor.

The return of
the *f. fac.*

Ca. fa. sued.

Suggestion of a
devastavit.

Fieri facias of
the goods of
the intestate;
but if he hath
wasted them,
then to sum-
mon him, &c.

case lately made and provided, were adjudged for his costs and charges by him about his suit in the prosecution of our certain writ of *scire facias* of and upon the judgment aforesaid against the said *J.* in our court aforesaid lately prosecuted, whereon the same *J.* is convicted, as it appears to us on record, if he had so much thereof in his hands; and if he had not so much thereof in his hands, then the said 7*l.* 10*s.* to be levied on the proper goods and chattels of him the said *John*; and that you should have that money before us at *Westminster* on the said day to be paid to the said *E.* for those costs and charges, and that you should have there then that writ: and you on that day returned to us that the said *J.* had no goods or chattels which belonged to the said *E. B.* at the time of his death in his hands to be administered in your bailiwick, whereof you could cause to be made the debt and damages aforesaid, or any part thereof; and that the said *J.* had no goods or chattels of his own in your bailiwick, whereof you could cause to be made the said 7*l.* 10*s.* for the costs and charges aforesaid, or any part thereof: and whereas we have commanded you by our other writ that you take the said *J.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster* on day next after

to satisfy the said *E. C.* the said 7*l.* 10*s.* And because the said return is thought to be in delay of the execution of the debt and damages aforesaid against the said *E. B.* in his life-time as aforesaid recovered; and also because in our same court before us on the behalf of the said *E. C.* it is sufficiently testified that several goods and chattels which belonged to the said *E. B.* at the time of his death came to the hands and possession of the said *J.* after the death of the same *E.* to be administered; and that the said *J.* hath sold and wasted those goods and chattels, and the money thence arising hath converted and disposed to his own proper use, and that the said *J.* the residue of the goods and chattels aforesaid which belonged to the same *E.* at the time of his death hath eloined to places unknown to the said *E. C.* and to his own proper use converted, to the intent that the said execution thereon should not be made; and we being unwilling that those things which are lawfully transacted or adjudged in our said court before us should be by craft and subtilty rendered ineffectual, command you, that of the goods and chattels which belonged to the said *E. B.* at the time of his death being in the hands of the said *J.* to be administered in your bailiwick you cause to be made the debt and damages aforesaid, if you can cause them to be levied thereon, and the money thereon levied have before us on the said *Tuesday* next after five weeks of *Easter* to be paid to the said *E. C.* for the said debt and damages; and if they cannot be levied thereon, then if it shall appear to you by inquisition, on the oath of good and lawful men of your bailiwick in this behalf to be taken, or by any other means whereby you may better know or be certified that the said *J.* hath sold, eloined, wasted or to his own proper use converted

[667]

converted or disposed the goods or chattels which belonged to the said *E. B.* at the time of his death, to the value of the debt and damages aforesaid, against the said *E.* in his life-time, so as aforesaid recovered, or any part thereof, then by good and lawful men of your bailiwick give notice to the said *J.* that he be before us at *Westminster* on the said *Tuesday* next after five weeks of *Easter*, to shew, if he hath or can say any thing for himself, why the said *E. C.* ought not to have his execution against him for the debt and those damages, to be levied on the proper goods and chattels of him the said *J.* if he shall think fit, and farther to do and receive what our court before us shall then and there consider concerning him in this behalf; and have there then the names of those by whom you shall give him notice, and this writ. Witness *J. Holt*, *knt.* &c.

On which day before the lord the king at *Westminster* comes the said *E. C.* in his proper person; and the sheriffs, to wit, *C. D.* and *G. J. knt.* return the writ aforesaid to them in form aforesaid directed in manner and form following, to wit, that the said *J. B.* is not found in their bailiwick, nor hath any goods or chattels which belonged to the said *E. B.* at the time of his death in his hands to be administred in their bailiwick, whereof they can cause to be made the debt and damages aforesaid against the said *E.* in his life-time recovered, or any part thereof; but that the said *J. B.* had several goods and chattels which belonged to the said *E. B.* at the time of his death in his hands to be administred, to the value of the debt and damages aforesaid, recovered by the said *E. C.* against the said *E. B.* in his life-time; which said goods and chattels the said *J. B.* afterwards and before the coming of that writ to the same sheriffs had wasted, and the money thence received to his own proper use had converted and disposed, as by a certain inquisition on the oath of good and lawful men of their bailiwick before them by virtue of the writ aforesaid in this behalf taken, and to the writ aforesaid annexed, appeared to the same sheriffs: and the said sheriffs farther returned, that the said *J. B.* hath nothing in their bailiwick where or by which they can give him notice, neither is he found in the same; and he doth not come; therefore as before the sheriffs are commanded, that they take the said *J. B.* if he shall be found in their bailiwick, and him safely keep, so that they may have his body before the lord the king at *Westminster* on _____ day next after _____ to satisfy the said *E. C.* the said *7l. 10s.* and that by good, &c. they give notice to the said *J. B.* that he be before the lord the king at *Westminster* on the said _____ day next after _____ to shew why the said *E. C.* ought not to have his execution against him for the debt and damages aforesaid against the said *E. B.* in his life-time by the said *E. C.* recovered, of the proper goods and chattels of him the said *J. B.* if, &c. and farther, &c. The same day is given to the said *E. C.* there, &c. On which day before the lord the king at *Westminster* comes

Return, that the defendant is not found, and hath wasted.

A ca. sa. and
fii. fac. awarded.

Defendant appears.

Execution prayed.

Plea, fully administered.

Traverse of the *devastavit*.

[668]

Issue on the traverse.

Venue awarded.

comes the said *E. C.* in his proper person; and the said sheriffs return as before, that the said *J. B.* hath nothing in their bailiwick where or by which they can give him notice, neither is he found in the same: and the said *J. B.* on the same day being solemnly called by *J. L.* his attorney likewise comes; whereupon the said *E. C.* prays his execution against the said *J. B.* for the debt and damages aforesaid by him the said *E. C.* against the said *E. B.* in his life-time recovered of the proper goods and chattels of him the said *J. B.* to be adjudged to him, &c.

And the said *J.* in his proper person comes and defends the force and injury when, &c. and says, that the said *E.* ought not to have his execution against him for the debt and those damages, because he says, that he the same *J. B.* on the day of the issuing of the said writ of *scire facias* had fully administered all the goods and chattels which belonged to the said *E. B.* at the time of his death, which came to the hands of him the said *J. B.* to be administered, to wit, at *London* aforesaid in the parish of *St. Mary le Bow* in the ward of *Cheape*, and that he hath not, nor on the day of the issuing of the said writ of *scire facias* had, any goods or chattels which belonged to the said *E. B.* at the time of his death in his hands to be administered; without that, that the said *J. B.* hath wasted, sold, elained, or to his own proper use converted or disposed any goods or chattels which belonged to the said *E. B.* at the time of his death, in manner and form as by the said return of the said writ of *scire facias* and the inquisition aforesaid thereon taken is above supposed: and this he is ready to verify: wherefore he prays judgment if the said *E. C.* ought to have execution against him for the debt and those damages, &c.

And the said *E. B.* says, that he by any thing by the said *J. B.* above, in pleading alledged, ought not to be precluded from having his execution against him the said *J.* for the debt and those damages of the proper goods and chattels of him the said *J.* because he says that the said *J. B.* hath wasted, sold, elained, and to his own proper use converted and disposed the goods and chattels which belonged to the said *E. B.* at the time of his death, to the value of the debt and damages aforesaid, recovered by the said *E. C.* against the said *E. B.* in his life-time, in manner and form as by the said return of the said writ of *scire facias* and the inquisition aforesaid thereon taken is above supposed, to wit, at *London* aforesaid, in the parish and ward aforesaid; and this he prays may be inquired of by the country, and the said *J. B.* likewise: therefore the sheriffs are commanded that they cause to come before the lord the king at *Westminster* on day next after twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Subpoena.

WILLIAM, &c. To *J. B.* (the witnesses names) greeting: we command and strictly injoin you and every of you, that all and every business and excuse whatever ceasing, you and every of you be in your proper persons before our trusty and beloved *John Holt*, knt. our chief justice assigned to hold pleas in our court, before us at *Guildhall, London*, on the 29th day of *January* next ensuing, there to testify all and every those things which you or any of you shall know, in a certain action in our court before us now depending, undetermined, between *John G.* plaintiff and *Richard W.* defendant, in a plea of trespass on the case on that day by a jury of the country to be tried; and this do you, nor any of you by no means omit, under the penalty on every of you of 100*l.* Witness *J. Holt*, knt. at *Westminster* the 28th day of *November* in the 11th year of our reign.

Subpoena in case in London.

Holt. Coleman.

WILLIAM, &c. greeting: we command and strictly injoin you and every of you, that all and every business and excuse whatever ceasing, you and every of you be in your proper persons before our trusty and beloved *John Holt*, knt. our chief justice assigned to hold pleas in our court before us, at *Guildhall, London*, on *Thursday* the 4th day of *June* next ensuing, at 8 o'clock in the forenoon, there to testify all and singular those things which you or any of you shall know, in a certain action in our court before us now depending, undetermined, and there then to be tried between *R. W.* plaintiff, and *B. H.* and *Grace* his wife, administratrix of the goods and chattels, rights and credits of *W. L.* deceased, who died intestate, defendants in a plea of trespass on the case; and this do you nor any of you by no means omit, under the penalty on every of you of 100*l.* Witness *J. Holt, &c.*

The like against an administratrix in *London*.

WILLIAM, &c. To *J. C.* gent. greeting: we command and strictly injoin you, that all and every business and excuse whatever ceasing, you be in your proper person before our trusty and beloved *J. Holt*, knt. our chief justice assigned to hold pleas in our court before us at *Westminster* in the great hall of pleas there, on the 7th day of *July* next ensuing, to testify all and singular those things which you shall know in a certain action in our court before us now depending undetermined, between *J. R.* plaintiff, and *R. H.* and *R. D.* defendants, in a plea of trespass on that day by a jury of the country to be tried; and this in no wise omit, under the penalty of 100*l.* Witness *J. Holt*, knt. at *Westminster* 20th day of *June* in the 13th year of our reign.

[669]

In trespass in *Middlesex*.

Holt. Coleman.

Subpœna on a writ of inquiry in covenant.

WILLIAM, &c. To *J. H. J. Y. A. A.* and *S. G.* greeting : we command you and every of you, that all and every business and excuse whatever ceasing, you and every of you be in your proper persons before *Thomas A. esq;* sheriff of the county of *Sussex*, or his under-sheriff, on *Monday* the 23d day of *October* next ensuing, at the inn of *John T.* called the *Star Inn* in *Lewes* in the county aforesaid, to testify all and singular those things according to your knowledge and judgment which you or any of you shall know in a certain action in our court before us now depending between *E. R.* plaintiff, and *H. H.* defendant, in a plea of breach of covenant; in which said plea our certain writ of inquiry of damages to our same sheriff of *Sussex* by us out of our court before us sent and directed, is before the same sheriff in form of law to be then and there executed; and this do you, nor any of you, by no means omit, under the penalty of 100*l.* Witness, &c.

The ticket.

By virtue of a writ of *subpœna* to you directed and herewith shewn unto you, you are personally to be and appear before *Thomas A. esq;* sheriff of the county of *Sussex*, or his under-sheriff, on *Friday* the 11th day of this instant *October*, at two of the clock in the afternoon, at the house of *Mr. John T.* commonly called the *Star Inn* in *Lewes*, then and there to testify the truth according to your knowledge upon a writ of inquiry of damages to be then and there executed in a certain cause now depending between *E. R.* plaintiff, and *H. H.* defendant, in a plea of covenant broken on the part of the plaintiff; and this you are not to omit, upon pain of 100*l.* Dated the second of *October* in the twelfth year of the reign of our sovereign lord *William* the Third, by the grace of God, &c. *annoq; Dom. 1700.*

Subpœna in case in Middlesex sent to two witnesses in Ireland.

WILLIAM, &c. To *P. H. esq;* and *J. B. gent.* greeting : we command and strictly injoin you and each of you, that all and every business and excuse whatever ceasing, you and each of you be in your proper persons before our trusty and beloved *John Holt, knt.* our chief justice assigned to hold pleas in our court before us at *Westminster* in the great hall of pleas there, on *Friday* the 15th day of *May* next ensuing, to testify all and singular those things which you or either of you shall know in a certain action in our court before us at *Westminster* now depending undetermined between *E. E.* doctor of laws, plaintiff, and *G. P. gent.* defendant, in a plea of trespass on the case, and by a jury of the country then and there to be tried; and this do you, nor either of you, by no means omit, under the penalty on each of you of 100*l.* Witness *J. Holt, knt.* at *Westminster* 12th day of *February* in the 13th year of our reign.

Holt. Coleman.

WILLIAM, &c. naming the witnesses, (you can put but four in one writ) greeting : we command and strictly injoin you and every of you, that all and every business and excuse whatever ceasing, you and every of you be in your proper persons before our justices assigned to take assises in the county of *Sussex* on *Wednesday* the 12th day of *March* next ensuing at *East Grinstead* in the county aforesaid, to testify all and singular those things which you or any of you shall know in a certain cause in our court before us now depending undetermined between *William N.* plaintiff, and *Francis T.* defendant, in a plea of trespass and assault, and by a jury of the country then and there to be tried ; and this do you, nor any of you, in no wise omit, under the penalty on every of you of 100 l. Witness, &c.

At the assises in trespass.

WILLIAM, &c. To *S. D. &c.* greeting : we command you and every of you, that all and every business and excuse ceasing, you and every of you be in your proper persons before our justices assigned to take assises in the county of *Hereford* on *Saturday* the 14th day of *March* next ensuing, there to testify the truth of your knowledge in a certain assise of *novel disseisin*, then to be taken between *Gilbert H.* demandant, and *W. D.* tenant of the freehold in *Hereford* ; and this do you, nor any of you, by no means omit, under the penalty of 100 l. Witness, &c.

Subpoena in an assise.

Summonire facias.

ANNE, &c. To the sheriff of *Berks*, greeting : we command you, that you summon *John S.* bart. having the privilege of parliament, that he be before us at *Westminster* on day next after to answer to *William C.* in a plea of trespass on the case, as he can reasonably shew, that he ought to answer therein ; and have there this writ. Witness *J. Holt*, knt. at *Westminster* the third day of *May* in the third year of our reign.

A summonire facias against a member of parliament,

Holt. Coleman.

Superseas.

A superseas
to an attach-
ment of privi-
lege by a clerk
of K. B.

A N N E, &c. To the sheriff of *Middlesex*, greeting:
whereas we lately commanded you by our writ, that you should attach *Josias T.* if he should be found in your bailiwick, and him safely keep, so that you might have his body before us at *Westminster* on *Monday* next after three weeks of *St. Michael* last past, to answer to *Richard A.* gent. being one of the clerks of *Rowland H.* esq; and *Edward F.* esq; chief clerk in our court before us, according to the liberty and privilege for such chief clerk and his clerks for time immemorial used and approved in the same; and because the same *Josias T.* hath come into our court before us, and found sufficient bail to answer to the said *Richard* in the plea aforesaid, and to satisfy the said *Richard*, if it shall happen that he the said *Josias* shall be condemned in any action at the suit of the said *Richard*: therefore we command you that you do intirely supersede from further taking the said *Josias*, attaching, imprisoning, or in any wise molesting him on that account; and if you have taken and detain him in prison on that account and no other, then without delay cause him the said *Josias* to be delivered out of the prison wherein he is so detained at your peril. Witness *T. Parker*, knt. at *Westminster* the 24th day of *November* in the ninth year of our reign.

Holt. Ventris.

A superseas
to the marshal
of K. B. where
the defendant
was brought by
habeas corpus,
and the plaintiff
not declaring in
three terms was
non-suited.
The defendant,
on filing com-
mon bail, was
discharged.

A N N E, by the grace of God of *Great Britain*, *France* and *Ireland* queen, defender of the faith, &c. To the marshal of our *Marshalsea* before us, greeting: whereas *Henry B.* the younger, on the 10th day of *December* in the year of the Lord 1713, was by *Robert E.* knt. one of our justices assigned to hold pleas in our court before us, committed to our prison under your custody by virtue of our writ of *habeas corpus* issuing out of our said court, and directed to the mayor, aldermen and sheriffs of the city of *London*, and by the return thereof was charged by virtue of a plaint levied against him the said *Henry* in *London* at the suit of *John T.* in a plea of trespass on the case, to the damage of 500 *l.* and the same *Henry* in our prison under your custody by virtue of the commitment aforesaid hath hitherto remained, without any prosecution by the said *John T.* against him the said *Henry B.* on the commitment aforesaid; because nevertheless the said *Henry* hath come into our court before us at *Westminster*, and put in common bail at the suit of the said *John*, according to the custom of our court aforesaid, to answer to the said *John* in the plea aforesaid: therefore we command you that you intirely supersede from taking the said *Henry B.* attaching, imprisoning, or in any wise molesting him on that account; and if the said *Henry* is detained in your custody on that account and no other, then

then without delay cause him to be delivered out of your prison wherein he is so detained at your peril. Witness *T. Parker*, knt. at *Westminster* the 16th day of *June* in the 13th year of our reign.

WILLIAM, &c. To the sheriff of *Stafford*, greeting :

[672]

whereas we lately commanded you by our writ, that you should take *Joseph H.* if he should be found in your bailiwick, and safely keep him, so that you might have his body before us at *Westminster* on *Tuesday* next after 15 days of *St. Martin* last past, to answer to *Francis B. gent.* in a plea of trespass, and also to the bill of him the said *Francis* against him the said *Joseph* for 120 *l.* debt, according to the custom of our court before us to be exhibited: and because the same *Francis* hath not declared against him the said *Joseph* within two terms, whereby the same *Joseph* hath come into our same court before us, and put in common bail at the suit of the said *Francis* in the plea aforesaid, therefore we command you, that from farther taking the said *Joseph*, attaching or imprisoning, or in any wise molesting him on that account, at the suit of the said *Francis* you intirely supersede; and if you have taken and detain him in prison on that account, and no other, then cause the said *Joseph* without delay to be delivered out of the prison wherein he is so detained, at your peril. Witness *J. Holt*, knt. at *Westminster*, &c.

A supersedeas because the plaintiff did not declare within two terms.

ANNE, &c. To the sheriff of *Middlesex*, greeting: where-

as you was lately commanded, that you should take *Martha F.* if, &c. so that you might have her body before us at *Westminster* on *Monday* next after the octave of *St. Hilary*, to answer to *J. M. William A.* and *S. A.* in a plea of trespass, and also to the bill of them the said *J. M. W. A.* and *S. A.* for 500 *l.* upon promise, according to the custom of our court before us to be exhibited: and because the same *Martha* hath come into our court before us, and put in common bail at the suit of the said *James, William* and *Samuel*, in the plea and to the bill aforesaid, therefore we command you, that from taking the said *Martha F.* attaching, imprisoning, or in any wise molesting her on that account, you intirely supersede; and if you have taken and detained her in prison on that account, and no other, then cause her the said *Martha* to be without delay delivered out of the prison wherein she is so detained, at your peril. Witness *J. Holt*, knt. at *Westminster*, &c.

A supersedeas on the defendant's filing common bail by order of a judge.

ANNE, &c. To the marshal of our *Marshalsea* before us,

greeting: whereas *Peter Q.* of *B.* was lately committed to our prison under your custody for want of good bail, at the suit of *Simeon G.* in a plea of trespass on the case: and because the same *Peter* hath come into our court before us and found sufficient bail to answer to the said *Simeon* in the plea aforesaid, and to satisfy

A supersedeas to discharge the defendant upon his having procured good bail.

satisfy the said *Simeon*, if it shall happen that he the said *Peter* shall be condemned in any action at the suit of the said *Simeon*, therefore we command you, that from farther taking the said *Peter*, attaching, imprisoning, or in any wise molesting him on that account, you intirely supersede; and if you have taken him on that account, and no other, then cause him the said *Peter* to be without delay delivered from the prison wherein he is so detained, if he be detained on that account, and no other, at your peril. Witness *J. Holt*, knt. at *Westminster* 23d day of *January* in the fifth year of our reign.

Otherwise,

WILLIAM, &c. To the sheriff of *Middlesex*, greeting: whereas we lately commanded you by our bill, that you should take *Thomas H.* if, &c. and him safely, &c. so that you might have his body before us at *Westminster* on day next after last past, to answer to *Bryan B.* in a plea of trespass, and also to the bill of him the said *Bryan* against him the said *Thomas* for 20 *l.* upon promise, according to the custom of our court before us to be exhibited: and because the same *B. B.* hath not declared against him the said *Thomas H.* within two terms, whereby the said *Thomas H.* hath come into our same court before us, and put in common bail at the suit of the said *Bryan* in the plea aforesaid, therefore we command you, that from farther taking the said *Thomas H.* attaching and imprisoning, or in any wise molesting him on that account, you wholly supersede; and if you have taken and detain him in prison on that account, and no other, then cause him the said *T. H.* to be without delay delivered out of the prison wherein he is so detained, at your peril. Witness, &c.

[673]

In order to be intitled to this writ, you must get a certificate that there is no declaration delivered against the prisoner in his custody.

Then get the like from the clerk of the declarations at the K. B. office, that there is no declaration filed.

Then you make-out a common bail-piece, with this addition, because the plaintiff hath not declared within two terms, let there be a writ of *superfedeas*.

Then you file the certificate, and sign the writ.

Upon which the sheriff makes out the following discharge to the keeper of the prison.

Middlesex, By virtue of his majesty's writ of *superfedeas* to me directed, I command you to discharge out of your custody the body of *Thomas H.* of and from all actions and executions against him in my office: this is your warrant.

Dated *July 12, 1718.*

R. B. and H. F.

WILLIAM, &c. To the warden of our prison of the Fleet, greeting : whereas *A. V.* was committed to the prison of the Fleet afore said by *George T.* knt. chief justice of our court of the bench at *Westminster*, by virtue of our writ of *habeas corpus cum causa*, directed to the bailiff of the liberty of the dean and chapter of the collegiate church of *St. Peter, Westminster* in the county of *Middlesex*, and by the return thereof was charged, by virtue of a certain warrant from the sheriff of the county of *Middlesex* on a bill of *Middlesex* returnable before us at *Westminster* on Friday next after three weeks of *St. Michael*, to answer to *Z. W.* clerk in a plea of trespass, and also to the bill of him the said *Z.* against him the said *A.* for 185 *l.* debt, according to the custom of our court before us, to be exhibited ; and because the said *A.* hath come into our court before us at *Westminster*, and put in common bail at the suit of the said *Z.* in the plea afore said ; therefore we command you, that from taking the said *A.* attaching, imprisoning, or in any wise molesting him on that account you altogether supersede, and if you detain him the said *A.* in your custody on that account, and no other, then him from your prison in which he is so detained without delay cause to be delivered at your peril. Witness, &c.

A supersedeas to the warden of the Fleet to discharge a prisoner taken upon a bill of Middlesex in the liberty of the bailiff of Westminster, against whom there was no declaration in two terms.

WILLIAM, &c. To our constable of our castle of *Dover*, or his lieutenant or deputy, greeting : because in the record and proceedings, and also in the pronouncing of an outlawry against *E. S.* late of *D.* in your county, gent. at the suit of *R.* earl of *Montague* in a plea of trespass on the case, in our hushings of *London* pronounced, and before us wheresoever, &c. lately returned and filed, a manifest error hath happened, to the great damage of him the said *E. S.* as by the inspection of the record and proceedings thereof being in our court before us appears to us on record : and we, for divers errors in the record and proceedings afore said in our court before us found, the outlawry afore said have reversed and intirely annulled ; and it is further considered, that the said *E. S.* to the common law of our kingdom of *England*, and to all things which he by reason of the outlawry afore said hath lost be restored : therefore we command you and every of you, that from taking the body of the said *E. S.* or seizing into our hands any goods or chattels of the same *E.* by reason of the outlawry afore said you wholly supersede, and if he in our prison under your custody on that account, and no other, is detained, then him from the prison wherein he is so detained without delay cause to be delivered at your peril : we likewise command you, that if any goods or chattels of the same *E.* into our hands by reason of the outlawry afore said, and no other, you have taken or seized, or any of you hath taken or seized, then them without delay to the same *E.* cause to be delivered also at your peril. Witness, &c.

A supersedeas both for the delivery of the body and goods where an outlawry is reversed.

A *superfedeas* to a *ca. sa.* because it issued erroneously.

WILLIAM, &c. To the sheriff of *Middlesex*, greeting :
 whereas we lately commanded you by our writ, that you should take *Richard C.* esq; if he should be found in your bailiwick, and him safely keep, so that you might have his body before us from the day of the holy *Trinity* in three weeks, wherefoever, &c. to satisfy *John L.* 33 *l.* 8 *s.* 3 *d.* for his damages which he sustained as well by reason of a certain trespass and ejectment to the same *J.* by the said *R.* in our kingdom of *Ireland* lately done, as for his costs and charges by him about his suit in that behalf there expended, whereof he is convicted in our court of the common bench in our kingdom of *Ireland* aforesaid, as it appears to us on record ; and also 18 *l.* 16 *s.* sterling for his costs and damages which he sustained by reason of the delay of execution of the judgment aforesaid, by pretence of the prosecution of our certain writ of error by the said *R.* upon the premisses in our court before us in our said kingdom of *Ireland* prosecuted, and whereon the judgment aforesaid in our same court before us in *Ireland* was afterwards affirmed, as it appears also to us on record ; and likewise 44 *l.* to the same *J.* by our court before us now here in our kingdom of *England*, according to the form of the statute in such case made and provided, adjudged for his farther costs, charges and damages which he sustained by reason of the delay of execution of the judgment aforesaid, on the pretence of the prosecution of our other certain writ of error in our court before us in *England*, whereon the judgment aforesaid in our same court was afterwards affirmed, as by the inspection of the record and proceedings thereof, which out of our court of the common bench in the kingdom of *Ireland* aforesaid into our court before us in the same kingdom by virtue of our writ of error we caused to be brought, and which out of our court before us in *Ireland* aforesaid into our court before us in our kingdom of *England* by virtue of our like other writ of error we likewise caused to be brought ; and which said record and proceedings out of our same court before us into the then present parliament we likewise caused to be brought ; and the judgment aforesaid thereof was there affirmed, and which by the court of parliament aforesaid before us, wheresoever, &c. are remitted, appears to us on record : nevertheless because that writ out of our said court before us unjustly, improvidently and erroneously against the said *R. C.* issued, therefore we command you, that from farther taking, arresting, imprisoning, or in any wise molesting the said *R.* on the account aforesaid, you intirely supersede ; and if him on that account, and no other, you have taken and in prison detain, then him out of the prison wherein he is so detained without delay cause to be delivered, at your peril.
 Witness, &c.

Venire.

G E O R G E, &c. To the sheriff of *Middlesex*, greeting: we command you, that you cause to come before us at *Westminster* on *Wednesday* next after 15 days of *Easter* 12 free and lawful men of the body of your county, every of whom hath 10*l.* of land, tenements or rents by the year at least, by whom the truth of the fact may be the better known, and who are neither to *Grace B.* the surviving executrix of *James B.* esq; deceased, plaintiff, nor to *George B.* esq; defendant, in any wise related, to make a certain jury of the country between the parties aforesaid in a plea of debt, whereof a *scire facias*, &c. because as well the said *Grace B.* as the said *George B.* between whom the dispute thereof is, have put themselves thereof on that jury; and have there then the names of that jury, and this writ. Witness *John Pratt*, knt. at *Westminster* 12th day of *February* in the 6th year of our reign.

Venire in a scire facias in debt in Middlesex.

Ventris.

A N N E, &c. To the sheriffs of *London*, greeting: we command you, that you cause to come before us at *Westminster* on *Friday* next after three weeks of the holy *Trinity* 12 free and lawful men of the neighbourhood of *St. Mary le Bow* in the ward of *Cheape*, every of whom hath 10*l.* of land, tenements or rent by the year at least, by whom the truth of the fact may be the better known, and who are neither to the master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*, plaintiffs, nor to *Richard R.* citizen and stationer of *London*, defendant, in any wise related, to make a certain jury of the country between the parties aforesaid in a plea of debt, because as well the same *Richard* as the said master and keepers, or wardens and commonalty of the mystery or art of stationers of the city of *London*, between whom the dispute thereof is, have put themselves thereof on that jury; and have there then the names of that jury, and this writ. Witness *J. Holt*, knt. &c.

Venire in London.

W I L L I A M, &c. To the sheriff of *Middlesex*, greeting: we command you, that you cause to come before us at *Westminster* on *Monday* next after three weeks of *St. Michael* 12 free and lawful men of the body of your county, each of whom hath 10*l.* of land, tenements or rent by the year at least, by whom the truth of the fact may be the better known, and who neither to *T. H.* the plaintiff, nor to *D. D.* otherwise *D.* the defendant, are in any wise related, to make a certain jury of the country between the parties aforesaid in a plea of trespass on the case, because as well the same *D. D.* as the said *T. H.* be-

Venire in Middlesex in case.

tween whom therein the dispute is, have put themselves thereof on that jury; and have there the names of that jury, and this writ. Witnesses, &c.

[676]
Venire at the
assizes in debt.

WILLIAM, &c. To the sheriff of *Northampton*, greeting: we command you that you cause to come before us at *Westminster* on *Wednesday* next after the octave of the purification of the blessed *Mary* 12 free and lawful men of the body of your county, of whom each hath 10 *l.* of land, tenements or rent by the year at least, by whom the truth of the fact may be the better known; and who neither to *Ellis F.* executor of the last will and testament of *William F.* deceased, plaintiff, nor to *Richard B.* otherwise called, &c. defendant, are in any wise related, to make a certain jury of the country between the parties aforesaid in a plea of debt, because as well the said *Richard B.* as the said *Ellis F.* between whom therein the dispute is, have put themselves thereof on that jury; and have there then the names of that jury, and this writ. Witnesses, &c.

By proviso.

If by proviso, we say in the *distringas*, but not in the *venire*, former defaults, provided always that if two writs thereof shall come to you, then one only of them execute and return; and have there then the names of that jury and this writ. Witness *J. Holt, &c.*



THE
HEADS
OF THE FOLLOWING
TABLE.

A Batement
Abdication
Action on the Case
Action on Statutes
Action on the Case for Trover
Action for Words
Account
Accord and Concord
Adjournment of the Term
Administrator
Administration
Admitting a Clerk
Affidavit
Affirmance of Judgments on Writs of Error
Aiel
Amendment, *vide* Rule
Arbitrament
Assault and Battery
Attachment
Attaint, *vide* Recital
Audita Querela
Averment
Award, *vide* Arbitrament
Bail, *vide* Recognizance
Bar
Bill
Bill of Exceptions
Bill of *Middlesex*
Calumpnia, *vide* Challenge
Capias
Capias ad Satisfaciend'
Capias si Laicus
Capias Utlagatum
Capias in Withernam
Capiatur
Case
Cassatio Brevis de Error, *vide* Quashing a Writ of Error
Certificate
Certiorari
Challenge
Cognovit Actionem, &c.

Colloquium
Committitur
Comperuit ad diem
Concord, *vide* Accord
Confession of the Action, Plea and Damage, *vide* Cognovit Actionem, &c.
Consultation
Continuances
Continuando, *vide* Trespass
Covenant
Creation
Curia Advisare, &c.
Custom
Death, *vide* Mors
Death of the King, *vide* Demise le Roy
Debt
Decem Tales, *vide* Postea
De Injuria sua Propria
Demise le Roy & la Reigne
Demurrer & Joinder
Depositions
Devise
Dilapidations, *vide* Case
Diminutions
Discontinuance
Distringas
Dower
Ejectment
Elegit
Error
Escrow
Excommunicato Capiendo
Extent, *vide* Inquisition
Feigned Issue, *vide* Action on the Case
Fieri Facias
Fine, *vide* Error
Forejudger, *vide* Bill
Foreign Plea
Fresh Pursuit
Grant of an Office
Grant by the Roy
Habeas Corpus
Habere 'ac' Possession'

The HEADS of the following TABLE.

Habere fac' Seisinam	Plene Administravit
Homine Replegiando	Postea
Hue and Cry	Prescription
Imparlance, <i>vide</i> Licentia Interloquendi	Privilege
Indictment	Procedendo
Information	Profert in Cur'
Infra Ætatem	Prohibition
Inquisition and Inquiry	Protestando
Inrolment	Quare Impedit
Judgments	Quashing a Writ of Error
Jurata & Jurator'	Recital
King, <i>vide</i> Demise le Roy	Recognizance
Latitat	Recordare fac' Loquelam
Lease	Recovery
Levant and Couchant	Regula
Licentia Interloquendi	Release
Mandamus	Relicta Verificatione
Mandavi Balliyo	Remisit dampna
Memorandum	Replevin
Mittimus	Rescous
Mors	Respondeas Ouster
Ne unque Executor	Responsio
Nil dicit	Restitution
Nihil habuit per descensum	Retainer
Nil habuit in Tenementis	Retorn' Habend'
Nihil Retorn'	Reversal
Nisi prius	Riens per Discent
Nolle Prosequi	Rule, <i>vide</i> Regula
Non Assumpsit & Non Assumpsit infra sex Annos	Satisfaction
Non Cul'	Scire Facias
Non Dampnificatus	Scire fieri Inquir'
Non Debet	Simony
Non Detinet	Solvit ante diem & solvit ad diem
Non Devastavit	Son Assault
Non Dimisit	Subpcena
Non Ejecit	Suggestion
Non est Factum	Summoniri Facias
Non Inform'	Superfedeas
Non Infregit	Surrender
Non Indemnificavit	Taliter Process'
Non Intravit	Tender
Non Licentiavit	Trover
Non Omittas	Trespas
Non Ponend' in Assisas	Trover, <i>vide</i> Action on the Case
Non Pros'	Venire Facias
Non Reliquit	Verdict special and general
Novel Assignment	View
Nullo est erratum	Unica Taxatio Dampnorum
Nul tiel Record'	Uses
Original Orders	Utlagar'
Outlawry, <i>vide</i> Utlagar'	Wager of Law
Oyer	Warrant of Attorney
Oyer & Terminer	Warranty
Petition	Withernam
	Writs of Error.



T H E T A B L E.

Abatement.

T HAT they are not tenants in a writ of <i>aiel</i> . <i>Replication</i> that they are tenants. Demurrer general and joinder,	Page 92, 95
Variance between the writ and the count,	323
That the defendant sealed the deed jointly with another not sued,	7
That the defendant is an esquire,	6
Alien enemy,	1
<i>Misnomer</i> in the surname,	<i>ibid.</i>
Coverture, replication and issue,	1, 2
The like, and demurrer thereto,	220
Infancy pleaded by guardian,	3
Another action pending by original in the same court,	2
The like pending in common pleas,	7
<i>Misnomer</i> in the Christian name,	6
<i>Misnomer</i> of the county,	4
Of addition of degree,	2
Of degree of baronet,	5
That the defendant is an attorney of the common pleas,	3, 9
A writ of error pending in the exchequer chamber,	<i>ibid.</i>
The marriage not solemnized according to the ecclesiastical laws,	4
The like, replication and issue,	123
<i>Misnomer</i> in the stile of a corporation,	4
Defendants administrators, not executors,	5
By false <i>Latin</i> ,	<i>ibid.</i>
By grant of an office of filacer of the king's bench,	6
Not fifteen days between the teste and return of a <i>scire facias</i> ,	9
Abolution from sentence of excommunication	10
That the defendant sealed the bond jointly with one not sued,	2
That <i>J. S.</i> not named, is also churchwarden	12
That there is no such writ in the register,	193
Foreign plea to the marshal's court,	475

Property in a stranger. Replication and issue,	Page 351, 357
That the cattle were taken in <i>G.</i> not in <i>K.</i>	351, 356
The like, and issue on the traverse,	378

Abdication.

Abdication of king <i>James II.</i>	497
-------------------------------------	-----

Action on the Case.

<i>Assumpsit</i> against the acceptors of a foreign bill of exchange, payable at two usances and an half,	90
By the assignee against the drawer of an inland bill of exchange,	44
The like on a foreign bill of exchange against the drawer,	55
By the governor and company of the bank of <i>England</i> assignees of a promissory note against the drawer,	29
<i>Assumpsit</i> against a master on a promissory note drawn by his servant,	43
<i>Assumpsit</i> by assignees of two bankrupts, on notes given by the defendant's servant, payable to the bankrupts,	41
On a promissory note given by one partner on behalf of the other,	48
By the indorsee of an indorsee of a promissory note against the drawer,	73
Against the assignee of a promissory note,	43
On a promissory note against the indorsee,	54
Against executors on a promissory note indorsed to the plaintiff,	44
By the assignee of a promissory note against executors,	45
<i>Indebitatus assumpsit</i> and <i>quantum meruit</i> , for wines, oil and other goods sold and delivered,	14, 15
By a doctor of physick,	25
By a physician for curing the defendant's wife of a lunacy,	<i>ibid.</i>
For the hire of a horse, bridle and saddle,	28
Against	

The T A B L E.

Against a husband for diet and lodging for his wife, money lent her, money laid out to her use, cloaths provided for her, and money expended in her funeral,	Page 31	By an executrix for not transferring <i>South-Sea</i> stock,	Page 42
For freight and average,	33, 54	By original against executors for beer and ale delivered their testator,	476
<i>Assumpsit</i> for the use of a dock,	38	Against the master of a ship by an executrix for wages for the service of her testator's apprentice in a voyage to the <i>East-Indies</i> ,	53
<i>Quantum meruit</i> for shipwright's work,	43	<i>Assumpsit</i> against an executrix by an executrix for work done by her testator	50
<i>Indebitatus assumpsit</i> for money had and received by the defendant for the plaintiff's use,	24, 55	By a co-executor for goods which his testator sold to the defendant,	83
For money received to the plaintiff's use to try the title to an office,	24	By an executrix on an account stated by her with the defendant for goods sold by her testator,	84
<i>Assumpsit</i> for the goods of a bankrupt,	42	On a special agreement to deliver hops,	16, 17, 18, 19
The like,	30	On a special agreement for wood,	22
<i>Assumpsit</i> against two defendants for goods sold and work done,	14	On a special contract to deliver 300 <i>l.</i> third subscription <i>South-Sea</i> stock, to the <i>South-Sea</i> company,	85
By one clerk of the crown office against another for money delivered into his hands on a wager,	23	Count in a feigned action directed out of chancery to settle a difference in partnership,	45, 48
<i>Assumpsit</i> against a curfitor brought in the petty-bag office,	88	The like, and issue thereupon,	66
<i>Assumpsit</i> for money lent against a peer of Ireland by original in the common pleas,	21	The like between an executor and a donee concerning tallies,	65
The like by bill in the king's bench,	<i>ibid.</i>	For causing the plaintiff to be arrested by process out of the court of the lord mayor of London, to the pretended damages of 1000 <i>l.</i>	15
The like against a peer of Scotland, <i>ibid.</i>		For arresting the plaintiff in the court of the mayor of <i>Maidstone</i> without cause of action,	23
The like against the son of a peer of England called up to the house of peers by writ,	<i>ibid.</i>	For an arrest in the sheriff's court without cause of action, the cause having been removed by <i>habeas corpus</i> into the king's bench, and the plaintiff therein non-prossed for not declaring,	35
<i>Indebitatus</i> against a third person for the charge of a funeral,	27	Against a sheriff for an escape on mesne process,	60
<i>Assumpsit</i> by an apothecary for medicines administered to a third person,	24	Against the sheriff for an escape in an <i>ex-communicato capiendo</i> ,	87
By an apothecary for medicines administered to the defendant's son,	36	Against the sheriff for not arresting the party on mesne process,	60
For diet, washing, lodging and necessities for the defendant's son	39	Against the sheriff for taking insufficient bail on a replevin,	37
<i>Assumpsit</i> by a surviving partner suggesting the death of the other partner, pursuant to the late statute,	34	Against the high bailiff of <i>Westminster</i> , for a false return of a <i>feri facias</i> ,	40
The like against a surviving defendant,	<i>ibid.</i>	Against a headborough for billeting soldiers on the plaintiff,	21
<i>Assumpsit</i> against two partners, one being outlawed,	44	By a patentee for printing his copy without his licence,	63, 67
<i>Assumpsit</i> against an executor after outlawry of the other executors,	20	For keeping a dog accustomed to bite sheep,	29
By an attorney against a peer's executors for fees and business done in law and equity, as an attorney and solicitor on a special retainer,	27		For
By executors against a master of a ship for goods transported by him from <i>Guinea</i> to <i>London</i> ,	26		

The T A B L E.

For erecting a new sheep fair in prejudice of the plaintiff's old fair. <i>Page</i> 30	Upon the statute 8 <i>Annæ</i> by a landlord for a year's rent on a levy by <i>fieri facias</i> , <i>Page</i> 46
Against the master of a hoy for sinking the plaintiff's boat, 38	On the statute of <i>H. 6.</i> brought against a bailiff, for refusing to accept of bail, 71
By a mayor of a corporation against a late mayor, for the mace, sword, &c. 48, 51	On the stat. <i>Ed. 6.</i> for not setting forth tithes <i>de silva cædua</i> , 75
For diverting an antient water-course, whereby the plaintiff lost the benefit of his mill, 55	On the stat. <i>R. 2.</i> of <i>scandalum magnatum</i> , 494
For destroying the common with conies, 62	Action on the Case for Trover.
For hindring the plaintiff in the use of his market, 63	Trover by an administrator <i>de bonis non</i> , &c. for a mortgage deed and goods, 70
For breaking the plaintiff's inclosures, whereby the cattle of divers persons entered the plaintiff's close, 64	Action on the Case for Words.
Case by a proprietor against one who printed his copy against his consent, 63, 67	For words spoken of the surveyor of the navy, 77
For enticing the plaintiff's servant from his service, 72	The like, of a trader and freeman of <i>London</i> , 73
For stopping the way to the plaintiff's close, <i>ibid.</i>	The like, whereby the plaintiff lost her marriage, 61
For stopping up the plaintiff's lights, 81	Account.
For continuing thereof, 82	Account by church-wardens against the late church-wardens, 12
By a passenger against a carrier for special damage received by overturning his waggon, 84	By executors of a merchant against his factor as bailiff, 13
Declaration for a rescous on a distress for rent, 378, 379	Against a bailiff and guardian, <i>ibid.</i>
For indicting the plaintiff for a riot; which indictment was found <i>ignoramus</i> , 62	Accord and Concord.
For dilapidations, brought by the rector against the executor of the last rector, 67, 68	Hogheads of tobacco pleaded in satisfaction to an <i>assumpsit</i> for goods sold. Replication and issue, 121
The like, by the vicar against the executors of the last vicar for dilapidations, 21	The like, on a note indorsed. Replication and issue, 105
For not repairing fences whereby the plaintiff's cattle escap'd thro' another's land, and were impounded, 69	The like, by copper delivered in satisfaction. Replication, by protesting that the defendant did not give, for plea, says he neither had nor received the copper; judgment by default, inquiry awarded, the return and final judgment for the plaintiff, 498
For not putting out a buoy, whereby the plaintiff's ship was lost, 80	
For negligently keeping fire, 69	
Case by the occupier of lands against the rector for not taking away tithe-hay set out, 19	
Action on the Case on Statutes.	Adjournment of the Term. Vide Demise le Roy.
Case on the statute of <i>Magna Charta</i> , that no freeman shall be imprisoned but by judgment of his peers, 74	The entry of an adjournment of the term on the demise of king <i>William</i> , 104, 497

The T A B L E.

The like, on the abdication of king
James, Page 497

Administratoꝝ and Administration. *Vide Bar.*

Administration granted by the archbi-
shop of *Canterbury*, 165, 166, 178,
187, 572
By the dean of *Canterbury*, *sede vacante*,
572
By an arch-deacon, 164
By a peculiar, 165
By a commissary, 315, 399
Recital of an administration in the bar,
111

Admitting a Clerk.

A writ to the bishop to remove the pre-
sent clerk, and admit the clerk of the
plaintiff in the *quare impedit*, 531
The like, to admit a clerk, and inquire
if the prebend be void; and the year-
ly value thereof, after judgment af-
firmed on a writ of error, *ibid.*

Affidavit.

Affidavit in all cases, pursuant to the
statute 4 and 5 *Annæ*, of the truth of
a plea in abatement, 1, 4
Of the delivery of a declaration in eject-
ment to the tenant in possession, 203
Of the delivery of a declaration to a pri-
soner, 436
Of the execution of an arbitration bond,
and the submission to perform an
award, in order to make it a rule of
court, pursuant to the late statute, 96
Affidavit to obtain a judge's order for a
special *acetiam*; and his order there-
upon, 612

Affirmance of Judgments on Writs of Error.

The affirmance of a judgment on a writ
of error in parliament, 266, 267, 277
The like, on a writ of error in debt in
the exchequer-chamber, 262, 499
The affirmance of the reversal of a judg-
ment given by commissioners at the *Old*
Bailey on an indictment of high trea-

son upon a writ of error returned in
parliament, Page 243
An award of execution thereof into *Ire-*
land, 244
Affirmance of a judgment given in
the common pleas on a writ of error
returnable in the king's bench, 352

Aiel.

Count on writ of *Aiel*. Special plead-
ings therein, issue and the *nisi prius*
record thereof. 92

Amendment, *Vide Rule.*

Arbitrament.

Arbitration bond, submission and condi-
tion, pursuant to the late act of par-
liament, 96
Affidavit of the execution of the bond
and submission, *ibid.* 97
Rule of court thereupon, 97
The like, made at the sittings in *Middle-*
sex, by consent, to refer the cause to
the award of the king's serjeant, *ibid.*
His award thereupon, 98
Interrogatories exhibited on an attach-
ment for a contempt in not performing
an award, 98, 99
Award by three foremen of the jury,
pursuant to a rule of reference at *nisi*
prius, 97

Assault and Battery.

Declaration in the king's bench in assault
and battery, against a prisoner in the
custody of the sheriff, with an affidavit
according to the statute. 436
Assault, battery, and false imprisonment,
in the common pleas, *ibid.*
The like, for an assault on an infant.
Bar, that *E. M.* was possessed of sta-
bles in another county; that the plain-
tiff disturbing the horses there, the
defendant *molliter manus imposuit* to
put him out, and traverses the assault;
Replication de injuria sua propria, and
issue, suggestion that the issue ought to
be tried in the other county, 429, 430
Assault and battery, in wounding and
breaking the plaintiff's thigh, laid
specially, with a *continuando*, 429
The

The T A B L E.

The like, in flinging a wine-glass in the plaintiff's face, and cutting his cheek and eye, Page 453

The like, by baron and feme for an assault on the feme, whereby she miscarried: justification, defendant a beadle of a company, that the plaintiff disturbed the company in possession of their hall, and the defendant, by their command, *molliter manus imposuit*, and put her out, 455, 456

Attachment.

Attachment of privilege for an attorney of the court of king's bench, 532

The like, for a clerk of the king's bench, ibid.

Attaint, Vide Rectital.

Audita Querela.

A writ of *audita querela*, on the late statute concerning bankrupts, 533

Averment.

Averment that confiding, &c. 22, 25

Of notice of goods delivered, &c. 15, 43, 54

Of a moiety of land set out, 211

In a feigned issue, 46, 65, 66

That one of the defendants is outlawed, 44

Of bail rendred, 161

That the judgment was obtained on a *clausum fregit* original, 221

Of administration granted to defendant, 174

That the debt was true and just, 159

Award. Vide Arbitrament.

B.

Bail. Vide Recognizance.

Bar. Vide Accord. Administration.

Assault and Battery. Scire Facias. Trespas.

The pleading of a mortgage in bar to an outlawry. 527

Debt against the marshal for an escape; plea, that the prisoner made a tortious escape, and that the defendant took him on a fresh pursuit. Replication that the defendant permitted him to escape, and traverse of the breaking prison, Page 152

Plea, judgment in debt on a *mutuatus* in the common pleas, 158

Plea, judgment on bond against administratrix, & *plene administravit præter*. Replication that it is kept on foot by fraud, and that the defendant hath assets *ultra*. 159

Plea of payment to a *scire facias*, 393

The late statute against usury pleaded in bar; replication that it was for a just debt; rejoinder that it was corruptly agreed, &c. and issue, 183, 184

Licence to dig in plaintiff's soil, pleaded in trespass, 426

That the plaintiff assigned over his interest before any rent due, 109

Conditions performed, and that his testator surrendered the premises before the action, ibid.

That plaintiff did not receive the sacrament, ibid.

By an administrator, judgment in debt confess'd on a *mutuatus* in the king's bench, 58, 111

The like, on an *in simul computasset* in the king's bench, ibid.

The like, on a bond in common pleas pleaded, 111

The like, in debt for rent arrear in the intestate's time, in the common pleas, ibid.

Statute of usury, Car. II. pleaded, 113

Conditions performed generally; replication that he received 40*l.* of his master's money which he converted to his own use; rejoinder, he did not waste, and issue, 114

Conditions performed on articles; replication, breach in not paying 34*l.* general demurrer, 115

Conditions performed specially to debt on a bond, conditioned for payment of an annuity; replication, did not perform; rejoinder, tender, ibid.

Conditions performed specially on a bond to resign a benefice; replication by protesting that he has not performed for plea says, that the defendant resigned signed

The T A B L E.

igned to, &c. Rejoinder that he did not resign, and issue,	Page 118
Bar as to the first promise, payment; as to the second promise, that plaintiff accepted another note in satisfaction.	
Replication and issue,	121
Bar, as to part does not detain, as to the residue a retainer, and no assets <i>ultra</i> ,	215
Judgment recovered against an executor on bond given by his testator, in the common pleas; and <i>plene administravit præter 5 l.</i>	117, 119
Replication that the judgment is kept on foot by fraud,	120, 158, 159
As to part <i>non assumpsit</i> , as to the residue a demurrer,	
Justification in an action on the case for the word <i>Thief</i> ,	
Replication, a recovery against the warden of the <i>Fleet</i> for an escape, and judgment affirmed on a writ of error,	160
Plea, entry of plaintiff into part before any rent due; replication did not enter, and issue,	106
Replication, a recovery in debt against the warden of the <i>Fleet</i> for an escape after a commitment in execution by <i>babeas corpus</i> , and affirmed on a writ of error,	160
A common bar. And new assignment,	193, 437
That the bond was delivered as an escrow,	186
By an administratrix, a retainer in satisfaction of her debt,	215
Justification for a poor's rate, <i>per stat. 43 Eliz.</i> Replication <i>de injuria sua propria</i> , and issue,	218
In a feigned issue, as to the first promise, that plaintiff paid more than he had received; as to the second, that the intestate was not indebted to plaintiff, and issue,	48, 66
Payment before the day in debt on bond,	128
Bar to a <i>scire facias</i> , no seisin, at the time of the judgment,	391
That the judgment was in <i>Middlesex</i> , not in <i>Staffordshire</i> ,	392
Bar that <i>cestuy que vie</i> died under age,	103
Conditions performed to a sheriff's bond to prosecute a replevin,	124
Replication and issue,	<i>ibid.</i>
Inquisition on an outlawry for high treason, pleaded,	Page 124
Outlawry after judgment, pleaded in bar to a <i>scire facias</i> ,	386
Statute of limitations pleaded,	32, 478
Replication. <i>A latitat</i> sued out and continued,	122
A judgment recovered in covenant on marriage-articles, pleaded in bar by an executrix to debt on bond.	100, 102
Two pleas in bar pleaded by one defendant, <i>viz. non assumpsit</i> and bankruptcy,	106
The like,	332
Replication confesses the bankruptcy, and issue on <i>non assumpsit</i> ,	<i>ibid.</i>
Bar stat. 10 <i>Annæ</i> , pleaded in discharge of defendant's person only, being a prisoner; replication, not a true prisoner, and traverse of his discharge. Rejoinder and issue,	108
Plea by an administratrix, that her intestate was indebted by bond to J. S. Also a judgment recovered in the king's bench against the administratrix, on simple contract by her intestate: and that she hath not assets <i>ultra</i> ,	59
Replication that the bond and judgment is most part paid. Rejoinder, and maintains the plea,	59, 60
And issue thereupon,	<i>ibid.</i> 119
Stat. H. 6. That the bail-bond was taken <i>colore officii</i> ,	126
Bar in <i>transgr'</i> and assault of the wife, that the defendant arrested the husband by process out of an inferior court, and he escaped, whereupon they took him on fresh pursuit.	129

Bill.

The manner of filing a bill in king's bench, and the continuances indorled thereupon,	259, 261
The like, in common pleas in order to fore-judge an attorney there,	184
The manner of filing a bill, and suing a member of parliament in the king's bench by process of summons, pursuant to the statute, 8 & 9 W.	501

Bill of Exceptions.

Bill of exceptions to evidence on a trial in a <i>Mandamus</i> ,	250, 251
	The

The T A B L E.

The like, in an ejectment for lands in
Ireland, Page 273

Bill of Middlesex.

The form of the writ, with an *acetiam*,
538
An *alias* bill of *Middlesex*, ibid.
The entry thereof on the roll, to prevent
the statute of limitations occurring,
103, 482
Bill of *Middlesex*, directed to the coroners,
538
Replication, a bill of *Middlesex*, sued out
and continued. 104

C.

Calumpnia. Vide Challenge.

Capias.

A special *capias* in *trespass* and *assault*
founded on an original, 539
The like in *trespass*, *quare clausum fregit*
& *cum averiis*, &c. And also plough-
ing the land. ibid.

Capias ad Satisfaciend'.

Ca' sa' in debt, 543
In case, 546
In *trespass*, 543
In covenant, 547
Non omittas ca' sa', 544
The entry of a *ca' sa'*, 500
Ca' sa' upon a *non-pros* for not declaring,
544
Testatum ca' sa' after a judgment in eject-
ment in the common pleas, affirmed in
the king's bench on a writ of error,
ibid.
Ca' sa' in dower for damages upon a
judgment affirmed in the king's bench,
and for damages occasioned by delay of
execution, 545
Ca' sa' upon a judgment in the common
pleas, removed into the king's bench
and affirmed there, for that the plain-
tiff did not prosecute his writ of error,
ibid.

Ca' sa' in debt after judgment affirmed in
the king's bench in the time of the late
king, upon a writ of error from the
common pleas, Page 540
Testat' ca' sa' for the residue, in debt on a
judgment against bail on a recognizance
in the common pleas, affirmed in the
king's bench, 545
Ca' sa' in debt against the principal, to
warrant a *scire facias* against the bail,
546
Ca' sa' on a judgment on a *scire facias*
quare execution non, after a writ of error
returnable in the king's bench, 540
The like, for defendant on a *non-pros* for
not joining in issue in an action *qui tam*,
542
The like for a surviving executor after a
verdict on a *scire facias* in debt, 542
The like, in replevin after a writ of in-
quiry of the value of goods distrained,
and arrears of rent, ibid.
Testatum and *non omittas ca' sa'* in debt,
543
In *trespass* where the proceedings were by
original, 547
Against the bail in debt, ibid.
For and against an administrator in debt,
ibid.
For an executrix against an attorney after
non-pros of a writ of error from the ex-
chequer, 548
Ca' sa' for an administrator in case on a
judgment affirmed on a writ of error in
the king's bench, 549
Ca' sa' for the residue, 548
Ca' sa' upon a judgment affirmed in the
king's bench, where the *ioquela* was in
one king's reign, and judgment in an-
other, 549
Ca' sa' against the plaintiff upon a judg-
ment on a special verdict for the defen-
dant in ejectment, 550
Ca' sa' after a *scire facias* for an executrix,
541
Ca' sa' upon a judgment on the statute for
not filing bail in eight days, ibid.
Ca' sa' upon quashing a writ of error ac-
cording to the statute 4 & 5 *Anne*, ibid.
Ca' sa' upon affirmance of a judgment in
parliament after an affirmance in the
exchequer-chamber. ibid.

The T A B L E.

Capias & Laicus.

Capias si Laicus, out of chancery upon a statute merchant returnable in the king's bench, Page 550
The return and entry upon the roll, *ibid.*
Entry of a *capias si laicus*, extent, inquisition and liberate thereon. 551

Capias Utlagatum.

Special *capias utlagatum* after outlawry on judgment in the king's bench. 552

Capias in Withernam.

Capias in withernam. 553

Capiatur.

The entry of a *capiatur* on a verdict in the common pleas on *non est factum*. 379

Cafe.

The case of defendant in error, on arguing the cause in parliament. 265

Cassatio Brevis de Error. Vide *Quashing a Writ of Error*.

Certificate.

A judge's certificate on the trial that plaintiff had cause of action, 518
Trial by the bishop's certificate. 342

Certiorari.

Certiorari to the chief justice of England, to certify the tenor of a record and judgment in the king's bench into chancery, 554
Certiorari to certify the admission of an infant by his next friend, 555
The like to the chief justice of the king's bench, to certify the bill and imparlance into the exchequer-chamber, 258, 260, 555
The like, to certify the writ of inquiry, 556

The like, to certify diminution of words in the record, Page 556

The like, to certify a warrant of attorney, 558

The like, to certify an original, *ibid.*

The like, to certify diminution, and whether the record be falsely certified, 559

Certiorari to certify diminution of a bill, bail and warrant of attorney into the exchequer-chamber, 258, 260, 559

Certiorari to the chief justice of Ireland, to certify a bill, and warrants of attorney, 560

Certiorari to remove a cause,

Certiorari to the *custos brevium* to certify an original, 237

Certiorari to the chief justice of the king's bench, to certify warrants of attorney, venire, distringas and bill; return thereto *in hæc verba*, 258

The like, and return thereto, 260

Certiorari to the *custos brevium* of the common pleas, to certify a *clausum fregit*. Original and return thereto, 221

The like, to certify a warrant of attorney, and the return thereto that there is no warrant, 227

The like, to certify an original and *capias*, and return thereto, 235

Certiorari awarded in error, to certify an original of the right term, 237

Certiorari to remove an indictment and judgment of high treason at the Old Bailey, 240

Certiorari prayed to certify a warrant of attorney therein, 242

Certiorari to the grand sessions, to certify a record on which diminution was alleged in error, and return thereto, 245

Certiorari awarded to certify an original and warrant of attorney, 237

Certiorari to certify a record of a conviction of deer-stealing, 301

Certiorari to certify an admission by next friend,

Certiorari awarded to certify an original and warrant of attorney have not sent the several writs. 352

Conf
Dat
&c.

The T A B L E.

Challenge.

Challenge to the array at the assizes for non commorancy and a *venire de novo* awarded, Page 472
The like, to the array in a *quare impedit*,
345

Cognovit Actionem, &c.

Confession of damages to prevent executing a writ of inquiry, 470
Defendant pleads he is a bankrupt; plaintiff replies, confesses the bankruptcy, 107
Cognovit actionem by an heir in debt, 482
By an executor, 486
The manner of entering a judgment by *Cognovit actionem* in debt, 493
Cognovit actionem after *relicta verificatione*,
493

Colloquium.

Colloquium concerning the buying of hops, 17, 18, 19
For the sale of timber, 22

Committitur.

The entry of a *committitur* in execution, where the plaintiff acknowledges part received, 488
The like. 151, 161

Comperuit ad Diem.

Comperuit ad diem to a bail-bond, in the king's bench; replication no such record; rejoinder there is such a record, 498
The like, and failure of the record, judgment for the plaintiff.
Comperuit ad diem in the common pleas, where the action is brought in the king's bench, in the sheriff's name; replication, rejoinder and issue, 114, 479
Comperuit ad diem, to prosecute a replevin, 124

Concord. Vide Accord.

Confession of the Action, Plea, and Damages. *Vide Cognovit Actionem, &c.*

Consultation.

Consultation on a suggestion of a *modus* for tithes, Page 562
Consultation granted, because plaintiff had not proved his suggestion in six months, 324
Consultation to a prohibition on a suit in the court of honour, for that the cognizance was insufficient, 562

Continuances, Vide Distingas, Error, Venire.

Continuances on the adjournment of the court of
Of a bill filed in the king's bench, 261
Of a *Venire*, 123, 256
Of the jury, 257, 489, 508
Of a demurrer to a plea in abatement, 8
Of a demurrer to a plea in bar, 57, 216
To part of a plea, 56
Of a demurrer to a replication, ibid.
Of a special verdict in an ejectment in the common pleas, 194, 202
Of a demurrer to the assignment of errors, 220
Of *In nullo est erratum*, 225

Continuando, Vide Trespass.

Covenant.

Covenant by a devisee, against an assignee of a term for not repairing, 132
By a surviving lessor against tenant for years, for rent arrear, 130
Against the executor of an executor for an equitable right, by the assignee of the reversion against the assignee of the term, 134
Against an administratrix, on an indenture made to the intestate, 132
For rent arrear, 141
Plea that the mayor, bailiffs, &c. were seised in fee, until disseised by the plaintiff; replication that king *James* was seised in right of the duchy of *Cornwal*, and granted the premises to the plaintiff, and traverse the seisin of the corporation. Issue on the traverse, 141, 143
Covenant on a bill of sale of goods, 138
Covenant.

The T A B L E.

Covenant for the assignee of the rever- sion, against the assignee, of the term, for rent arrear. Page 135	For an executor against the heir of <i>R. D.</i> son and heir to <i>W. D.</i> brother and heir of <i>W. D.</i> brother and heir of <i>J. D.</i> 147
Covenant against an executor, where his testator engaged to take <i>South Sea</i> stock at such a price, such a day, 139	On a lease for years against an executor, Page 148
Creation.	On stat. 21 <i>H. 8.</i> for non-residence, 151
Plaintiff created a duke after issue joined, 123	Debt by the queen dowager against the marshal for an escape on a commitment in execution, 151
Created a baron before plea pleaded, 500	Debt on the <i>habeas corpus</i> act of 31 <i>Car.</i> 2. for 500 <i>l.</i> against a gaoler denying a copy of a commitment to a prisoner, 153
Defendant created a baron in an <i>elegit</i> , 210	On a by-law for not accepting of the li- very, ibid.
Curia Abbatis. <i>Vide Continuationes.</i>	By an executor for rent due in his own time. Bar that the lessee, assignee and plaintiff, entred, 155
<i>Curia Advisare</i> on a demurrer to decla- ration in abatement, 5, 8, 57	Against the warden of the <i>Fleet</i> for an es- cape after commitment in execution, 156
On a demurrer to a plea in abatement, 8	Debt against baron and feme, the feme administratrix, on a penal bill payable at several times, 158
On a demurrer to a plea in a writ of <i>Aiel</i> , 93	Debt by the lord of a manor against an heir for a fine on his ancestor's death, 146
After a verdict in dower, 191	On the statute of <i>Ed. 6.</i> for not setting forth tithes, 148
After a special verdict in the common pleas, After a demurrer to a plea in debt, and joinder, 216	Debt on statute 7 <i>Willielmi</i> against a re- turning officer for refusing the copy of the poll, and verdict for plaintiff, 255
After <i>in nullo est erratum</i> , 225, 231, 243	The like, for tithes of grain, 163
Custom.	Debt by an executor for rent due in the testator's life-time, 165
Custom of <i>England</i> , set forth in case for dilapidations, 67, 68	Debt on bond by an executor of an execu- tor against an administrator, 164
Custom for safe keeping of fire, 69	On bond by an executor, ibid.
For masters of ships to put on a buoy, 31	By an administrator. ibid.
D.	Against an executor by the surviving obligee, 165
Death. <i>Vide Hops.</i>	Against an executor, 176, 481
Death of the king. <i>Vide Demise</i> <i>le Roy.</i>	By an administrator <i>de bonis non</i> , on bond made by a feme sole to the testator, 167
Debt.	By an administrator on several bonds, ibid.
Debt in the king's bench on several bonds, 167, 185	Debt on bond against two executors, ibid.
Debt on bond in the common pleas, 184	Debt on the late statute to prevent gaming, 168
Debt on bond by a surviving executor, 144	Debt for rent on a lease, ibid.
By the duke of <i>York</i> on bond against one attainted of high treason, 144	Debt on a bond by executors against the heir and devisee of the obligor, 172
	Debt against the principal on a bail-bond assigned to plaintiff, 115, 173, 174
	The like, against the bail on an assign- ment of the bail-bond, 175, 176
	Against

The T A B L E.

Against an administrator on a bond made by the intestate to the plaintiff's wife whilst sole,	Page 174
Debt <i>qui tam</i> , &c. on the stat. Car. 2. for not coming to church,	175
Debt against an executor on a bill penal made by her testator for payment of an annuity,	177
By an administrator <i>durante minori etate</i> against an executor on a bond made by her testator,	<i>ibid.</i>
By an executor against an administrator on a bond,	178
By an executor against an attorney on a bond,	<i>ibid.</i>
Debt for rent of a rectory and tithes by indenture,	179
Against an heir on a bond made by his ancestor,	180
Debt on three judgments recovered in <i>Ireland</i> , and for costs on three writs of error,	181
Debt on a bond against the attorney in the common pleas,	184
Debt on bond in the king's bench,	145
For rent on a lease at will laid doubly,	185
For rent on articles against an administrator,	215
Debt <i>qui tam</i> , against a parson for marrying without publishing the banns,	222
Debt on bond by an administrator <i>de bonis non</i> of an administrator,	187
Debt against the marshal of the king's bench for an escape after a commitment in execution on a <i>habeas corpus</i> in a judgment in the common pleas,	187, 188
Debt on a bond by an executor of an executor, against an administrator,	165
Debt in the exchequer against a legatee, pursuant to the statute 3 & 4 W. 145	
Debt by queen <i>Ann</i> on bond made to king <i>William</i> ,	<i>ibid.</i>
Debt on stat. 7 & 8 W. against the returning officer for refusing a copy of the poll,	255
Debt on a judgment after verdict,	495
Debt against an heir executor and devisee pursuant to the late statute,	529

Decem Tales. Vide Tit. *Postea*.

Vol. II.

De Injuria sua propria, Vide Injuria.
Replevin. Trespass.

Replication <i>de injuria sua propria</i> in trespass,	Page 431, 427
In replevin,	126, 350

Demise le Roy & la Reigne.

Death of the king,	122, 123, 273, 453, 473
Death of the king, and adjournment of the term,	104, 479
The like, after errors assigned,	234

Demurrer to a Declaration, and Joinder.

To a declaration in case,	106
In covenant,	138
In debt,	
<i>Quare impedit</i> ,	343
Replevin,	354, 376
<i>Scire facias</i> ,	397
Trespass,	103

To a Plea.

Demurrer to a plea in case and special causes,	103, 105, 106
— to a plea in debt and joinder,	126, 128, 186, 217
— to a plea in part,	182
— to a plea in a prohibition,	334
— to a plea in a <i>quare impedit</i> in abatement,	343
— to a plea in abatement in replevin,	351
— to a plea in replevin in an inferior court,	355
— to a cognizance in replevin,	370
— to a plea to a <i>scire facias</i> ,	382
— to a plea in trespass,	383, 406
Demurrer and joinder to a replication in debt,	152, 153, 160
— in <i>scire facias</i> ,	410

To a Rejoinder.

Demurrer to a rejoinder in replevin,	373
--------------------------------------	-----

L 1

The T A B L E.

To a Surrejoinder.

Demurrer to a surrejoinder in a <i>scire facias</i> ,	Page 422
——to a surrebutter,	172
Demurrer to the challenge of the array,	345
Demurrer to the assignment of errors and special causes shewn,	
Demurrer to the assignment of errors and joinder,	220, 231
——to a replication in error,	491

Depositions.

Depositions on the trial of an issue in replevin set forth in an information for perjury,	297, 301
---	----------

Devise.

Devise of lands to two for their lives, one dies, the survivor brought covenant,	133
Devise of copyhold lands in fee,	207
Devise of lands in fee, remainder to the heirs male, remainder to the issue of the heir male,	197

Dilapidations. Vide Action on the Case.

Diminution.

Diminution alledged in a record of a judgment given in the grand sessions of Wales,	226
Diminution alledged in a record of a judgment in the king's bench, certified in the exchequer.	257
Diminution alledged in the record certified,	405
The like,	253, 257
The writ to certify diminution,	565
Diminution alledged in a record of a judgment on an indictment of high treason	243

Discontinuance.

Discontinuance of an issue,	489
-----------------------------	-----

Distingas.

<i>Distingas</i> awarded in a writ of <i>aisl</i> ,	94
---	----

In an issue on a writ of error in dower, Page 269

Distingas on an issue upon a writ of error, 228, 229

On an issue out of the petty-bag-office, 90

In a *scire facias*, 567

Distingas decem tales awarded, 489

Distingas in debt in *Middlesex*, 566

Distingas on an issue upon a writ of error to recognize, whether the plaintiff in error died before trial of the issue,

Distingas to the sheriff of *Middlesex* to return a writ of *elegit*, 567

Habeas corpus jur' in a prohibition, *ibid.*

Distingas in a *scire facias*, *ibid.*

The like in case, 568

Distingas nuper vic' to have the body of the defendant upon a *cepi* returned, *ibid.*

Distingas on the stat. 4 & 5 *Anna*, in case of a view, and the return thereof, *ibid.*

Distingas in an appeal of murder, 569

Distingas nuper vic' to return a writ of *latitat*, *ibid.*

Distingas to answer in case against an earl, by original, *ibid.*

Distingas in prohibition at the assizes, 570

Distingas upon a trial at bar, *ibid.*

Dower.

Dower of the third part of a messuage, and of rent, 189

Plea by guardian was always ready to render, *ibid.*

Husband not seised, &c. 269

E.

Ejectment. Vide Error. Rule.

Ejectment. Lease to recover possession of uninhabited premises, 202

Count by original to be delivered to the tenant in possession, 203

The notice, *ibid.*

And affidavit of the delivery, *ibid.*

The like, on a double demise by executors, 204

Rule whereby tenants are made defendants, and costs tax'd on a *non pros'* at the assizes, 202

Ejectment

The T A B L E.

Ejectment of a messuage, cottage, moiety of a manor, fair, market, toll, &c.

Page 192

Ejectment for the mesne profits, *ibid.*

Ejectment for lands in *Kent*, 194

The like, on a double demise against two defendants, tenants in common, one an infant, for three parts in five parts to be divided of lands, and tenements, special pleadings, demurrer and joinder, 205

Declaration in ejectment for lands in *Ireland*.

Elegit. *Vide Nil habuit in Ten'tis.*

Elegit for an administratrix in debt, after judgment affirmed on a writ of error in the exchequer-chamber, 571

Elegit in debt after a *scire facias*, 572, 575

Elegit in debt for an administratrix on a judgment recovered by her intestate, *ibid.*

Elegit in debt after judgment on a *testatum scire facias* tertenants, and inquisition returned, 573

The like, upon judgment against bail upon a writ of error in the exchequer-chamber, 575

The entry of an *elegit* into a county palatine, and three other counties, 496

Elegit on a judgment in debt in the common pleas, and the return, 576

Entry of an *elegit* against two defendants, and *nil* as to one, and an *inquisition* returned as to the other, after judgment upon a *scire facias*, 577

Another in debt after a *scire facias*, 211

Return of an *elegit* where a lease is found and the land also, 578

The award of an *elegit*, and *alias* on the roll whereon the judgment is entered, and the *inquisition* returned thereon, and a moiety delivered to plaintiff, 210

Elegit sued out and returned into the exchequer, 170, 171

Error.

Error *coram vob*, coverture assigned in the plaintiff at the time of exhibiting the bill; demurrer thereto and joinder, 220

Error assigned in trover for the moiety of a ship, that the original in the cause was a *clausum fragit*, 221

General errors assigned on a *scire facias* against the bail, 225

Errors assigned on debt on three judgments affirmed in *Ireland*, Page 225

Errors assigned, the declaration insufficient and death of the defendant in error before verdict, *ibid.*

Error assigned, the declaration insufficient, and *venire* tested before issue joined, 226

Want of warrant of attorney assigned for error, and *certiorari* returned, that there is no warrant of attorney, 227, 352

Death of plaintiff in error before trial, 228

Replication that he is alive, and traverses the death, rejoinder and issue, 229

Another before the return of the writ of inquiry 230, 231

The entry of a second writ of error *coram vobis* on the abatement of the first writ by death of one of the plaintiffs in error, 232

Another; infancy assigned, replication and issue, 231, 232, 252

Error *coram vobis*, infancy assigned, demurrer thereto, 491

Error assigned in parliament on a judgment in the king's bench, affirmed in the exchequer, 263, 233

Assignment on a judgment in *scire facias* out of *Ireland* returnable in the king's bench in *England*, *ibid.*

On the affirmance of a judgment in *Ireland*, *ibid.*

Assignment of diminution after verdict, 253

Want of original and writ of inquiry assigned for error, no original is certified, and as to the writ of inquiry *non mis' breve*; and another *certiorari* is pray'd and an original certified of the right term, 237, 352

Errors assigned in action of assault, that the original was sued out before the fact done, *certiorari* and the *capias* certified in *nullo est erratum* joined: A *certiorari* ordered by the court to certify the original which is certified in *hac verba*, 234

Error in law and in fact assigned; demurrer special and rejoinder,

Error assigned in parliament by the attorney general to reverse the reversal of a judgment given in an indictment of high treason, (the sentence not being according to law) no warrant attorney. *Certiorari* and judgment, that the reversal of the judgment be affirmed, 238, 239

244

The T A B L E.

- Error specially assigned to reverse an outlawry pronounced in the grand sessions of *Wales*, Page 244, 245
- Errors assigned that defendant in the action was a prisoner, and had not a copy of the declaration delivered to him, 246
- Error by the bail *tam in redditione judicii quam in adjudicatione executionis* on the recognizance, 290, 378
- Error assigned, no *scire facias* assised, 247
- Error assigned by the plaintiff in the action, where judgment was given for the defendant, 253
- Error assigned in parliament on a judgment given in a *mandamus*, 248
- Assignment of errors in ejectment tried at the bar in *Ireland*, 272, 277
- The like assigned in parliament on a judgment in the common pleas in *Ireland* affirmed in the king's bench there and error brought in parliament here, 271
- Error to reverse a fine, with all the pleadings thereupon, and summons and severance, &c. 278, 285
- Assignment of errors by attorney, death of plaintiff in error before the day in bank, plea that he is alive, replication and issue, 228, 268
- Infra etatem* assigned in dower after a verdict, replication, *deius age*, 268, 270
- Error assigned in the exchequer-chamber on a judgment in the king's bench. No warrant of attorney, *venire*, or bill, 256, 257
- General errors assigned in parliament, and *in nullo est erratum*, 363
- Affirmance in parliament of a judgment given in the king's bench, and transmission of the record into the king's bench, 266
- The like in the exchequer, 262, 267
- Error in trespass in the county palatine of *Lancaster*, commenced by *latitas* in the king's bench, 217
- The like, to reverse a fine for death, before the king's silver paid, 280
- The like, 278
- Error assigned for a prosecutor *qui tam*, &c. on a judgment given in *Ireland*, 286
- Error assigned in the affirmance of a judgment by the king's courts in *Ireland*, which was given by the court of common pleas there, Page 254, 276, 288
- Errors assigned in the council-chamber, on a judgment in *scire facias* 423
- Error assigned in parliament to reverse a judgment given in a *mandamus*, 250
- Error assigned in parliament in the affirmance of a judgment in *Ireland*, 277
- Assigned in parliament, where the judgment in the common pleas was reversed in the king's bench, 278
- Error assigned, that the infant appeared by guardian, and there is no record of admission. *Certiorari in nullo est erratum*, 289
- Another *certiorari ad informand' cur'*. The admission certified, *ibid.*
- Errors assigned, no original, and warrant of attorney, *certiorari pray'd et non miser' brevia*, 352
- Error in replevin on a judgment given in the borough-court of *Windsor*, held by letters patent, the whole proceedings, and judgment for defendant affirmed in the king's bench, 353
- Errors assigned for reversal of an outlawry, 457, 463, 464

Crown.

Plea that the bond was delivered as an *escrow*, 186

Excommunicato Capiendo.

Breve de excommunicato capiendo after sentence in the court christian, 579

Replication, excommunication absolved, 10

Extent. Vide Inquisition.

An extent in aid of the king, 307, 308

Inquisition thereupon returned, 308

Extent for lands on outlawry for high treason, 304

A mortgage pleaded before outlawry to an inquisition on an extent, 527

Writ of extent upon a *capias si laicus*, 580

The T A B L E.

F.

Feigned Issue. *Vide* **Issue** on the Case.

Fieri Facias.

Fieri facias in debt after a *scire facias*, Page 590
Fieri facias on a judgment on a recognizance of bail in the common pleas, affirmed on a writ of error in the king's bench, 582
Testatum fieri facias against bail on a judgment by default on a *scire facias* in the king's bench, *ibid.*
 The like, against a clerk of the king's bench, 587
Testat' & non omit' fieri facias on the affirmance of a judgment in the common pleas on a writ of error in the king's bench, 582
Fieri facias for costs on a judgment recovered in a feigned issue directed by the court of king's bench, 583
Fieri facias upon a judgment in a *scire facias quare execution' non* after a writ of error, *ibid.*
Fieri facias in debt, after judgment affirmed, on a writ of error in the king's bench, *ibid.*
 The like, for a defendant on a *non pros'* of the plaintiff at the trial; 684
 The like, on a judgment of debt by confession, *ibid.*
Fieri facias in debt upon a judgment recovered by the testator in his life against defendant in his life, and revived by executors of plaintiff against executors of defendant, 584
Fieri facias for an executor against an administratrix in debt after a *scire facias*, 585
Fieri facias in case, *ibid.*
 The like, for the residue in debt, *ibid.*
 The like, in assault, 586
 The like, against bail after a *scire facias*, *ibid.*
Fieri facias for an executrix against an administrator in debt *de bonis propriis* of the administrator, *ibid.*
Testatum fieri facias in debt after *scire facias*, 581

Fieri facias for restitution, after judgment reversed upon a writ of error, Page 587
Fieri facias, the sheriff returns a lease for years taken in execution for part of the debt, and that there are no other goods for the residue, 587
Fieri facias, against bail upon a recognizance removed out of the common pleas by *certiorari*, after judgment affirmed upon a writ of error in the king's bench, 588
Fieri facias against the principal in debt after judgment affirmed in the king's bench upon a writ of error, *ibid.*
Fieri facias in debt after verdict and writ of error in the exchequer-chamber, where judgment was affirmed, 588
Fieri facias where the judgment in the common pleas was affirmed in the king's bench, the plaintiff in the action died, and his administrator revived the judgment, 589
Fieri facias against bail in debt in the king's bench, *ibid.*
 Writ of seisin and *fieri facias* in an assise of novel disseisin, 589, 590
Fieri facias of ecclesiastical goods,
Fieri facias for the defendant where the plaintiff was non-pros'd, 591
 The like, against bail to warrant a *capias ad satisfaciendum*, *ibid.*
Fieri facias against bail upon judgment on a *scire facias quare executionem non* upon error brought out of the common pleas, *ibid.*
Testatum fieri facias for the residue, 592
 Recital of a *fieri facias* and levy thereupon, 40, 442
 Plea a *fieri facias* sued out, and levy, replication and issue, 396
 The like, and issue, 394
 The entry on the roll of a *fieri facias* to save the suing out a *scire facias*, 500
Fieri facias for the defendant for costs in trespass, 592
Fieri facias after a *scire facias* prosecuted by an administrator after judgment affirmed upon a writ of error out of the common pleas in the life of the intestate, *ibid.*
Testatum fieri facias for the residue after execution adjudged upon a *scire facias*, 593

The T A B L E.

Fine. Vide Error.
 Fine levied by tenant in fee, Page 199, 283
 Summons and severance, and special
 pleadings in a fine, 278

Forejudger. Vide Will.

Foreign Plea.

Foreign plea pleaded to the palace court,
 575

Fresh Pursuit, 122, 152

G.

Grant of an Office.

Grant of the office of one of the filazers of
 the king's bench by the chief justice, 6

Grant by the Roy.

Grant by the king to the duke of York of
 the estate of a person attainted by act of
 parliament, 144

H.

Habeas Corpus. Vide Recital.

Habeas corpus to remove a person charged
 with actions in the king's bench from
 the Fleet to the king's bench prison,
 594

Another to remove a cause out of the
 sheriff's court in London returnable im-
 mediately, *ibid.*

Directions to the marshal's court, *ibid.*
Habeas corpus upon a *capias* in *withernam*,

Habeas corpus to testify, *ibid.*

Habeas corpus cum causa returnable before
 one of the justices of the king's bench,
ibid.

Habeas corpus ad respondendum directed to
 the judges of the palace court, *ibid.*

Habeas corpus altho' sick in prison, *ibid.*

Habere facias Possessionem.

Habere facias possessionem awarded in eject-
 ment, Page 194

The like, after a *scire facias* on a recovery
 in ejectment, 596

Another, and a *feri facias* upon judgment
 affirmed on a writ of error in the king's
 bench, 597

Habere facias Seisnam.

Writ of *seisin* in debt after judgment af-
 firmed in the king's bench, 598

Habere facias seisinam upon a writ of affise
 of novel disseisin, *ibid.*

Homine Replegiando.

The entry of the writ of *homine replegiando*
 and all the proceedings, with the judg-
 ment thereupon, 293

Hue and Cry.

The *nisi prius* record, in an action on the
 statute of hue and cry for a robbery of a
 master and servant, 295

I.

**Imparlance. Vide Licentia Interlo-
 quendi.**

Indictment.

Indictment for high treason, with all the
 proceedings therein, and judgment that
 the prisoner be hanged, drawn and
 quartered, 238, 244

Information.

Information of deer-stealing on the statute
 of W. 3. Inquisition, and the convic-
 tion thereupon, 301

Certiorari to the justices, to certify the
 proceedings thereon in the king's bench,
 and return thereof, 302

Information of perjury in an action of re-
 plevin, 297

Another

The T A B L E

Another on stat. 5 *Eliz.* for exercising the trade of a brewer, Page 303

Infra Etatem. Vide Error.

Infra etatem pleaded to an action for taylor's work, replication that they were necessary for defendant's degree; rejoinder not necessary, and issue, 107
Scire facias against the heir and tenant; the heir pleads *infra etatem*, 383

Inquisition and Inquiry. Vide Elegit. Judgments. Nil Dicit.

Inquiry awarded in case, 8, 57
 Another to inquire what damages the plaintiff sustained by breach of the first promise, 57
 Inquisition of the value of the lands and costs in dower, and inquisition returned and judgment final, 190
 Inquisition on an *elegit*, defendant seised of land in fee, and a moiety set out to the plaintiff, 211
 Inquiry awarded in an action on the case, return and final judgment, 57
 Inquisition on an outlawry for high treason, and the return, 304
 The like, out of the exchequer on a *scire facias* in aid, 308
 Inquiry of damages taken by the bailiff of a liberty, 472
 Inquiry taken by a former sheriff, returned by his successor, 485
 Inquiry in replevin on a judgment by default upon an *avowry* for rent, to inquire how much rent due, and the value of the goods, 610
 Writ of inquiry upon an original, 611
 Writ of inquiry in an action on the case, 599
 Inquiry for the mesne profits after judgment in ejectment affirmed on error in the exchequer-chamber, and the return thereupon, *ibid.*
 Inquiry of damages in replevin, where judgment was given for the defendant on demurrer, 600
 Inquiry of the arrear of rent, and value of the cattle distrained on *non pros* in replevin, 348, 601
 Inquiry of damages in replevin after judgment upon a demurrer, 602

Inquiry after *scire facias* against an administrator where the defendant died before the return of the former writ of inquiry, Page 605

Habere facias possessionem and writ of inquiry upon a judgment in ejectment, 606

Inquiry of the value of lands descended to an heir, *ibid.*

Inquiry in an action *qui tam*, &c. in prohibition, *ibid.*

The like, upon the stat. 22 & 23 *Car.* 2. c. 4. for mesne profits after affirmance of a judgment upon a writ of error in ejectment, 607

Inquiry of damages in trespass, where the defendant pleaded not guilty as to part, and justified as to the residue, and judgment for the plaintiff upon a demurrer, 608

Inquiry upon the stat. 8 & 9 *W.* 3. intitled *An act to prevent frivolous and vexatious suits*, 608, 609

Another upon the same statute, to be executed before the judges at the assizes, 609

Inquiry upon the statute where the plaintiff died after interlocutory, and before final judgment, *ibid.*

Inquiry in replevin on a judgment by default upon an *avowry* for rent to inquire how much rent due and the value of the goods distrained, 610

Inquiry where the action was brought by original, 611

Inrolment.

Before a judge of the assizes, 505

Judgments. Vide Abatement. Bar. Nil Dicit. Non Pros. Replevin.

Judgment for plaintiff on a demurrer in abatement to a declaration, 8

For plaintiff in case, after demurrer in bar, 57

After confession of damages in case, to prevent the executing a writ of inquiry, 470

Judgment final in case, on a verdict for the plaintiff, 510

Against an heir *quando assets acciderint*, 505
In

The T A B L E

In dower to recover seisin and the value of the lands, and costs after a tender, <i>Page 189</i>	For plaintiff after a verdict on <i>non est factum</i> in the common pleas, <i>Page 379</i>
For plaintiff, on a verdict in debt at the assizes, 257	For plaintiff in ejectment after a verdict, 503
For the demandant in dower, 270	For plaintiff in trespass after inquiry, where the jury give more damages than declared for, <i>ibid.</i>
For defendant after a demurrer in debt, 217	For plaintiff in ejectment after a verdict on a double demise, 604
<i>Non pros</i> in replevin for not declaring, 505	For plaintiff on a <i>scire facias</i> in ejectment, 394
Judgment final after a writ of inquiry, 374	Judgment <i>de assets in futuro</i> , 482, 505
That the first and third promises are insufficient, the second and fourth sufficient, 497	On failure of the record, 498
Two defendants, one appears and pleads specially, and the other suffers judgment, 137	Judgment for the king in a <i>quare impedit</i> given on the bishop's certificate, 342
For the plaintiff in trespass after verdict, 219	For the king in a <i>quare impedit</i> given by the justice of assize, 346
Judgment on a verdict in trespass, part for the plaintiff, part for the defendant, 475	That the array of the panel is insufficient, and a <i>venire de novo</i> awarded, 345
For damages confessed on a plea of <i>plene administravit præter</i> , &c. <i>ibid.</i>	Judgment <i>per nil dicit</i> in prohibition, 320
Against two executors, where only one appeared, 478	Judgment in case for words, part for plaintiff, part for defendant, 508
In debt after a verdict for plaintiff, in <i>Middlesex</i> , 379	Judgment, part for the king, part for the informer, on a verdict in an action <i>qui tam</i> , 224
In ejectment by <i>nil dicit</i> with a <i>remissio dampna</i> , 194, 507	Judgment, that the reversal of a judgment be affirmed, 243
In replevin, that the replication is good, inquiry awarded and judgment final, 374	For costs <i>in duplo</i> in a prohibition, 325
For defendant in replevin in an inferior court, to have a <i>ret</i> irreplegiabile, 356	Judgment in a <i>scire facias</i> for a surviving plaintiff, 398
Interlocutory judgment in replevin, 35, 373	Judgment for the king in a <i>scire facias ad satisfaciendum</i> , 422
Judgment for plaintiff in replevin, 352, 374	Judgment for defendant on his waging his law, 468
For the demandant in a writ of <i>aial</i> , 93	Judgment against an executor in case on a promissory note given by his testator, 504
The manner of entering a judgment by confession on the roll, 485	Judgment in debt against the heir of an heir of a devisee, <i>ibid.</i>
Judgment on an indictment for treason, that the party be hanged, drawn and quartered, 241	The entry of a judgment on a <i>scire facias</i> in the common pleas against the bail on a recognizance on a new original, upon the reversal of an outlawry, 526
Judgments pleaded, 100, 111, 374	
In replevin for plaintiff after a writ of inquiry, 348	Jurata and Jurator.
In a <i>scire facias</i> against bail by <i>nil dicit</i> , 380, 522	The <i>jurata</i> in <i>Middlesex</i> on a writ of <i>aial</i> and continuance, 195
In a <i>scire facias</i> against principal and bail in error, 379	In debt in the king's bench in <i>Middlesex</i> , 185
	At the assizes in the king's bench, 358
	Another in the common pleas, 269
	In

The I T A B L E.

In an action *qui tam* in the common pleas
in London, Page 223
In an action *qui tam* on the statute of hue
and cry, 297
Jurata continued in the king's bench,
256, 586
In *Middlesex*,
In a prohibition, 315
In replevin at the assizes, 358
In *scire facias* at the assizes, 401
In a *quare impedit*, 346
Jurata on a trial at bar, 273, 327 507

K.

King. *Vide* Demise le Roy.

L.

Latitat.

The form of a *latitat*, *alias* & *pluries*,
612
Latitat pleaded, 122
The entry of a *latitat* on the roll to save
the statute of limitations, 469

Lease.

Lease at will pleaded, 57
Lease for a year pleaded, 196
For years, 199
Lease and release set forth in a special
verdict, 196, 197, 199

Levant & Couchant.

Levant & couchant pleaded, 366

Licentia Interloquendi, or Leave to
Imparle,

Imparlanee in the king's bench, with a
special note, 469
Another special, and a plea in abatement,
9
Imparlanee in the king's bench, 469, 521
Imparlanee and further imparlanee to a
declaration in an inferior court, 354

Imparlanee to a plea, Page 354
Further imparlanee, *ibid.*
The entry of an imparlanee on the roll in
the common pleas, 496
Special imparlanee, 123
Imparlanee to answer, 106, 123, 137,
185, 215
Another, where one defendant appears,
and the other makes default, 137
To reply, 355
Imparlanee to reply, special and con-
tinuance, *ibid.*
Where plaintiff was created a peer after
the declaration delivered, and before
plea pleaded, 500
Imparlanee to join in demurrer, 356
Imparlanee and further imparlanee in
dower, 189
Imparlanee in prohibition, 326, 330
Another, and the defendant pleads dou-
ble by the leave of the court, 332
Imparlanee in a *quare impedit*, 340
Another in replevin and further impar-
lanee, 347, 354

M.

Mandamus.

Mandamus to admit a capital burghers, and
the return, the pleadings, verdict and
assignment of errors therein, 248, 250
To restore a proctor, 613
Award of a *mandamus* to the bishop, in a
quare impedit, 342
And the bishop's certificate thereupon to
the judges, *ibid.*
To the judge of the spiritual court to ad-
minister the oath to a church-warden,
613

Mandavi Ballivo.

Mandavi ballivo by the sheriff of *Middle-*
sex to the high bailiff of *Westminster*,
40
Another, 545, 548

Memorandum.

Memorandum in a prohibition. 321 to 338
By

The T A B L E.

By next friend,	Page 429
Of the same term,	469
Of a term past,	227, 429, 185, 469
Of a year past,	469
Memorandum in the common pleas,	156

Mittimus.

Mittimus to the judges of the common pleas of a <i>dedimus potestatem</i> for assigning a guardian in an action of waste, the <i>dedimus potestatem</i> and return,	616
Mittimus to the justices of the king's bench in <i>Ireland</i> to certify an indictment,	231

Mittimus to the crown office in the court of king's bench in <i>Ireland</i> , upon a judgment affirmed upon a special verdict on a forcible entry,	617
--	-----

Mittimus upon a judgment in the common pleas in <i>Ireland</i> , affirmed in the king's bench there, and the judgment afterwards brought by writ of error to the king's bench here, and both writs of error quashed,	619
--	-----

Another to the king's bench in <i>Ireland</i> on a judgment for defendant in ejectment affirmed on a writ of error in the king's bench in <i>England</i> , and return thereof,	6, 8, 619, 626
--	----------------

Mors. Vide Error. Suggestion. In nullo est errat'.

Death of one of the plaintiffs in error,	217, 228
Of plaintiff in a <i>scire facias</i> against tenant,	384
Death of plaintiff in error assigned before the day in bank. Replication. Verdict for plaintiff,	228
Death of plaintiff assigned before the return of the writ of inquiry. <i>Scire facias</i> prayed to the sheriffs of London,	230

N.

Nil dicit. Vide Judgment.

<i>Nil dicit</i> in ejectment with a remission of the damages,	194
--	-----

Another, & <i>habere fac' possessionem</i> awarded,	Page 194
In debt after imparlance,	473, 503
<i>Nil dicit</i> of the same term with the declaration,	473, 483
In a <i>scire facias</i> ,	380, 395
<i>Nil dicit</i> in case by original,	477
<i>Nil dicit</i> in a prohibition,	320

Nil habuit per Descensum.

Had nothing by hereditary descent, except, &c.	112, 180
--	----------

Nil habuit in Tenementis.

Had nothing in the tenements in debt for rent; replication, tenant by elegit. Rejoinder, tenant by elegit prior to plaintiff. Surrejoinder, the judgment by fraud, rebutter for a just debt, surrebutter & exit',	619, 169, 172
Another, except a reversionary judgment when the reversion should happen,	181

Nihil Retorn'. Vide Bar. Bill Middlesex. Latitat. Scire facias.

Nisi Prius.

The manner of making up the <i>nisi prius</i> record in a real action,	92
The manner of making up a record of <i>nisi prius</i> in debt in the king's bench,	185
In an issue on a writ of error in dower,	268
In a writ of error in case,	227, 228
In an action of hue and cry on the statute of <i>Winton</i> ,	295
In replevin,	357
In a <i>scire facias</i> ,	398
On an issue in the petty-bag office,	88
In prohibition,	311

Nolle Prosequi.

<i>Intr' inde</i> in case <i>quoad partem</i> ,	57
Another, in trespass,	448

The T A B L E.

Non Assumpsit, Did not undertake,
Et
Non Assumpsit infra sex annos, Did
not undertake within six years.

Non assumpsit infra sex annos, Page 32

Non assumpsit infra sex annos before the
exhibiting the bill; replication, a *lati-*
tat sued and continued. Rejoinder that
the defendant did not undertake, and
issue, *ibid.*

Non assumpsit to part, demurrer to other
part, 56, 57

That the testator *non assumpsit*, 478

Non assumpsit infra sex annos, before the
suing out the original writ pleaded to
an action on the case, brought by an
administrator. Replication that ad-
ministration was committed such a day,
whereby an action accrued, 471

Non assumpsit infra sex annos before the su-
ing out the original writ and issue,
478

Non assumpsit infra sex annos before the
exhibiting the bill; replication and
issue, *ibid.*

Another, and issue where the *venire* arises
in the county palatine, and *venire*
awarded thither, and record sent to the
chief justice of *Chester* to try it, and
certify to the king's bench, 479

Another, and replication, a bill of *Mid-*
dlesex, *alias* & *plur'* sued out and con-
tinued, 105

Three defendants, two plead *non*
assumpsit, and the third by leave of the
court pleads a double bar *non assumpsit*
and bankruptcy, 106

Non Culpabilis, Not guilty.

Not guilty in case, before and after im-
parlance, 123

In ejectment, 194

Not guilty within six years, 483

In an action *qui tam* on the statute of hue
and cry, 296

In an assault and imprisonment, 437

In trespass, 474, 489

Not guilty upon the new assignment in
trespass, 437

Not guilty as to part, 129, 426, 435

Non Dampnificatus, Not damaged.

Non dampnificatus to debt on a sheriff's
bond to execute a replevin with effect,

Page 124

Another, to a counter-security by bond,
as bail, 494

Non debet, Does not owe.

Non debet as to part, 215

Another in an action *qui tam* and issue,
223

Non debet on a penal statute and issue,
256

Non detinet, Does not detain.

Non detinet, as to part, 215

Non Devastabit, Did not waste.

Replication, *non devastavit*, rejoinder and
issue, 114

Non Dimisit, Did not demise.

Non dimisit and issue, 478

Non est factum, It is not his deed.

Non est factum, 379

Non est factum of the testator by an execu-
tor, 166

The like to a release of error, 229

The like in debt on a bond in the com-
mon pleas, 379

The like to articles, 488

Non Inform', is not informed. *Vide* *Ejectment. Judgments.*

Non inform' in ejectment, and a remission
of the damages, 506

Non Infregit, Did not break.

Did not break the covenant, 478

The T A B L E.

Non Indemnificabit, Has not indemnified.

Non indemnificavit, Page 162

Non Intrabit, Has not entred.

Non intravit and issue, 106

Non Licentiabit, Did not give leave.

Non licentiavit in trespass, 427

Non Omittas.

Non omittas latitas, 624

Non omittas ea' fa' in debt, 544

Non Ponend' in Affis.

Writ of non ponendis in affis. 625

Non Pros'. Vide Error. Judgments.
Recital. Postea.

Non pros' for not declaring after a removal of the cause by *habeas corpus*, 488

For not joining in demurrer, 103

For not assigning errors, 224

Non pros' in homine replegiando, 293

On evidence where a full jury appear, 509

Non pros' in replevin, plaintiff not pleading in bar to a cognizance, 347

For default of a replevin to the avowry, 484

Non pros' in the mayor of London's court for not declaring there, *ibid.*

Another for not declaring in replevin, 489, 505

The entry of a non pros' in error after two

scire facias quare executionem non, 236,

238

Non Reliquit.

Placitum, that defendant's husband non

reliquit 1000*l.* and then pleads a re-

tainer, 215

Probel Assignment, New assignment, 437

Nullo Errat'.

In nullo est errat' joined in parliament, Page 263, 243

The like in the king's bench, 352

In the exchequer chamber, 262

Death of one of the plaintiffs in error

suggested after errors assigned & *in nullo*

est errat' pleaded, 238

The like, 225, 236, 238

In nullo est errat' special, after a *certiorari*,

&c. in the king's bench, *protestando in*

nullo est erratum, 231

Nullo est erratum joined in parliament by

an executor, 234

The like on the assignment of errors to

reverse an outlawry. 246

Nul tiel Record', No such Record.
Vide Sci' fa'.

Nul tiel record' of a plea by the defendant,
Of a judgment pleaded to a *scire facias*,

473, 392

Nul tiel record' that plaintiff impleaded

defendant in the same court, 7

Another in the king's bench very special.

Replication, rejoinder, demurrer and

joinder, 392

Nul tiel record' of recovery as to part.

Replication that there is such a record,

182, 404

Nul tiel record' of a judgment, replica-

tion, another *scire facias* pending, *nul*

tiel record'. Rejoinder *nul tiel record'*,

surrejoinder and issue, 473, 393

Another by bail put in, in the king's bench,

rejoinder and issue, 390

Nul tiel record' of discontinuing a *scire*

facias, surrejoinder and issue, 393

Nul tiel record' compared. Replication,

rejoinder and issue, failure of record, and

judgment for the plaintiff, 498

O.

Orders. Vide Error.

A judge's order for a special *accesium*,

612

Order

The T A B L E.

Order on petition to assign errors in parliament, *Page* 264
 Order for the hearing counsel on a writ of error, *ibid.*
 Orders for the affirmance of the judgment of a writ of error in parliament, and the remission of the record in the king's bench, 266

Original. *Vide Bar. Error. Recital.*

The *præcipe* for an original,
 An original in trespass *quod clausum fregit*, 221
 An original in trespass, and the return, 235
 An original in case by the assignee against the acceptor of a note, 90

Outlawry. *Vide Utlegar'.*

Oyer. *Vide Bar. Debt. Replevin. Scire facias.*

Oyer on a bond and condition prayed and set forth, 175, 419
 Of a writ of *quare impedit* 343
 Of a writ of *scire facias* & *alias* & *return* 397, 407
 Of a *scire facias* on a recognizance, and the condition thereof, *ibid.*
 Of an original, 235, 408
 Of a *capias*, 235
 Of the judgment against the principal, 408

Oyer and Terminer. *Vide Error. Indictment.*

The commission of oyer and terminer at the Old Bailey certified; and also the indictment, plea and judgment of execution, 240, 242

P.

Petition.

Petition for a writ of error to be argued at the bar of the house of lords, 264

For leave to file an original, *Page* 247

Plene Administravit.

Plene administravit by an executor. Replication and issue, 475
 Judgment for the damages confessed. Issue. *Unica taxatio, et cessat taxatio dampnor'* until the issue tried, 475

Postea.

Postea in a writ of *aial*, and verdict for the tenants on a full jury in *Middlesex*, 95
Postea in ejectment, and verdict found special at the assizes on a full jury, in case on a verdict for plaintiff *per tales*, 509

In debt, and verdict for plaintiff at the assizes, *per tales*, 257

In dower at the assizes, verdict for the demandant, and find the value of the land, 269

Verdict set aside for a misdemeanor in the jury in giving the verdict, 270

Verdict *de novo*, *ibid.*

Verdict for plaintiff on *nil debet*, the defendant owes part and does not owe the residue, 511

The like, 509

Postea on a verdict *per tales* in *London* on *non debet* pleaded; and judgment, 224, 509

The like, 136

Verdict in ejectment on *non cul'* pleaded and tried at bar, 273

Postea on a verdict *per tales* in *Middlesex* *assumpsit*, 509

The like on a verdict for plaintiff on an issue *solvit ad diem*, 510, 512

Verdict for the plaintiff on an issue on *plene administravit*, 340

Verdict in an action on the statute for not coming to church on *nil debet*; part for plaintiff, part for defendant, 511

Verdict at bar for the plaintiff, 507

Verdict for the plaintiff, on *non est factum*, 511

For the defendant on *son assault*, *ibid.*

For the defendant in trespass on *non cul'* pleaded, *ibid.*

For the defendant in trespass, where statute of limitations was pleaded, *ibid.*

For

The T A B L E.

For the defendant on <i>plene administravit</i> pleaded, Page 511	For the plaintiff in trespass on several special issues, Page 425
For the plaintiff in covenant on conditions performed, pleaded, 512	In covenant upon several issues, 506
For the plaintiff in ejectment, <i>ibid.</i>	<i>In quare impedit</i> , verdict for the king, 517
For the plaintiff in trespass after a view, 589	For plaintiff in a feigned issue out of chancery 518
For the plaintiff on <i>non est factum</i> , 512	<i>Postea</i> in trespass, and verdict for plaintiff on a full jury, where the action arose in a county palatine, 218, 219
For the plaintiff on <i>infra etatem</i> , 519	
<i>Postea</i> , where a juror is withdrawn. <i>Disstringas decem tales tardaret</i> . 489, 512	Prescription.
Verdict for the defendant in replevin, where property is pleaded, 512	Prescription to hold a fair, 30
In ejectment on a double demise, part for plaintiff, part for defendant, 513	For common, 367, 360, 368
In trespass for stopping up a way, <i>ibid.</i>	For a way, 427
Verdict for trespass, part for the defendant, <i>ibid.</i>	To fish with nets, 431
For the plaintiff on <i>non assumpsit infra sex annos</i> pleaded, 513, 514	For a water-course, 55
For defendant, executor in case, that his testator <i>non assumpsit</i> , <i>ibid.</i>	For repairing fences, 70
For plaintiff in an action on the statute of hue and cry, 514	Another, 318
<i>Postea</i> & <i>non pros</i> , where a full jury appear, 509, 510	In trespass for necessary easement, 449
Plaintiff <i>non pros</i> 'd at the assizes on an issue in a writ of error, 514	For a driftway, 452
Verdict, part for the plaintiff, part for the defendant in case for words, 508, 509	Privilege. Vide Bill. Summonite facias.
The like in trespass, 514, 515	Writ of privilege for a filacer of the king's bench, 626
In ejectment; part for plaintiff, part for defendant, 515	Another, for an attorney of the king's bench, 627
The like in assault and false imprisonment, 516	Procedendo.
For plaintiff in case for continuing to stop up lights, where there was an issue on part, and demurrer to other part, <i>ibid.</i>	A writ of <i>procedendo</i> upon a <i>habeas corpus</i> directed to the constable of the honor and castle of <i>Windsor</i> , 628
In <i>quare impedit</i> , 345, 346, 517	Another, 629
<i>Non pros</i> ' at the assizes in trespass against a headborough, where the chief justice certified, 517	A <i>procedendo</i> upon a writ of <i>certiorari</i> directed to the mayor, aldermen and sheriffs of <i>London</i> , <i>ibid.</i>
For defendant in replevin on a tender pleaded, 518	Profert in Curia. Vide Bar. Debt. Error. Scire facias, Case. Coderant.
The like, <i>ibid.</i>	Letters testamentary, 51, 145, 147, 163
<i>Non pros</i> ' at the assizes in prohibition, 315	Of letters of administration, 165, 167
Verdict for the defendant in a prohibition that the <i>modus</i> was not paid, 315, 327	Of a will, 163
<i>Postea</i> and verdict in <i>Middlesex</i> in the common pleas, in debt on <i>non est factum</i> , 379	Of a writ of error <i>coram vobis</i> , 231, 232
Verdict by a full jury at the assizes for plaintiff in ejectment, 273	Prohibition.
<i>Postea</i> in a <i>scire facias</i> and verdict special, 401	Suggestion for a prohibition for words, 319, 337, 338

The T A B L E.

For refusing a copy of the libel	Page 321
By the husband, for that his wife by law could not make her will without his assent,	<i>ibid.</i>
Suggestion on a suit, that the party had not received the sacrament in his parish church,	322
Plea that he had received it in the abbey church,	323
Another upon a <i>modus decimandi</i> ,	311, 323, 325
The entry of the declaration, demurrer and joinder in a prohibition to the earl marshal's court against an undertaker for marshalling a funeral without licence from the earl marshal. Plea demurrer and joinder,	316
Suggestion for a prohibition for the word <i>whore</i> ,	319
The writ of prohibition thereupon,	630
Declaration on a prohibition to the court of honour, defendant having assumed a coat of arms	
Double plea and demurrer and joinder,	328
The entry of the enrolment of affidavits to prove the suggestion pursuant to the stat.	338
Suggestion for a prohibition to settle the limits of a parish,	335
The entry of a judgment by <i>nil dicit</i> in a prohibition,	320

Protestando.

<i>Protestando</i> that he has not eloiigned,	117
<i>Protestando</i> that he has not performed	119
That the original on which the proceedings were founded was an original between the parties in a plea of trespass on the case,	222
<i>Protestando</i> that there is no error in the record, and then demurs,	231
Not seised in fee,	451
That no part of the debts are paid,	59
That there is no such court, time out of mind, as the marshal, <i>protestando non dedit</i> ,	498
<i>Protestando</i> did not pay; rejoinder and issue,	493

Q.

Writ of error in a <i>quare impedit</i> ,	339
---	-----

Quare impedit, where king Charles II. was seised of the advowson in gross, that the church became void by death, and the king presented. Plea *A. B.* seised of a manor, to which it belongs; and that he presented and traverses the institution of the king, issue on the traverse, and trial by the bishop's certificate: and judgment for the king, Page 339, 342

Count in a *quare impedit*, where the king makes the incumbent a bishop, and afterwards grants in *commendam*. Plea variance between the writ and the count. Demurrer and joinder, 342, 343
Another for that it belongs to the king to present for simony: judgment for the king given by the justices at the assizes, 344

Quashing a Writ of Error.

Quashing a writ of error	224, 229
Writ of error quashed as to part, to be prosecuted as to the residue,	290

R.

Recital. *Vide Bar. Replevin. Error. Scire Facias. Quare Impedit.*

Recital of a bill of <i>Middlesex</i> sued,	104
Of a <i>latitat</i> sued,	105
Of a bill exhibited against the warden of the <i>Fleet</i> ,	161
Of an original out of chancery,	221
Of a <i>mandamus</i> ,	49, 250
Of judgment by <i>non inform</i> & <i>nil dicit</i> ,	162
Recital of a writ of error, returnable in the king's bench, and affirmance of the judgment,	<i>ibid.</i>
Of an <i>alias capias</i> ,	122
Of a <i>pluries</i> ,	<i>ibid.</i>
Of letters patent,	65, 411
Of a special <i>capias</i> in trespass and the warrant,	60
Of an act of parliament,	47, 108
Of a <i>feri facias</i> ,	47
Of marriage articles,	100
Recital of a <i>recordari</i> , declaration, avowry, replication, rejoinder, <i>postea</i> and nonsuit,	124, 125
Of	

Of an attain by act of parliament, P.	144
Of by-laws,	153
Recital of a judgment recovered against a third person, who was committed to the Fleet by <i>habeas corpus</i> and escaped. Judgment thereupon against the warden, who brought error, returnable in the king's bench, where it was affirmed,	157, 160
Of a bail-bond and condition, &c.	175
Of a <i>habeas corpus</i> sued,	35, 161
Of a judgment in covenant,	100
Of an imparlance,	102
Of a writ of inquiry,	<i>ibid.</i>
Of a judgment <i>de bonis testatoris</i> ,	<i>ibid.</i>
Of administration granted to defendant,	174, 399
Recital of a bill exhibited in the court of the mayor of London,	16

Recognizance.

Entry of a judgment in a <i>scire facias</i> in debt, on a recovery against the principal and bail, who brought a writ of error thereupon,	380
Entry of a recognizance on a writ of error, returnable in the exchequer chamber in a judgment in the king's bench,	519
Upon a <i>capias</i> in the common pleas in case,	<i>ibid.</i>
Another in debt,	521
Another on a <i>scire facias</i> against the bail on a writ of error, returnable in the king's bench on a judgment in the common pleas	380, 520
Entry of a recognizance of bail in the king's bench on a bill of <i>Middlesex</i> ,	521

Recordare facias Loquelam.

Writ of <i>re' fa' lo'</i> to a county court, returnable in the king's bench,	632
Another returnable in the common pleas,	633
Count in trespass removed by <i>recordare facias loquelam</i> out of the county-court for plaintiff to have his costs, the damages being under 40s.	375

Recovery.

Common recovery sued forth,	198
-----------------------------	-----

Regula.

Rule at <i>nisi prius</i> to stay the <i>possea</i> in the chief justice's hands,	Page 83
To make the tenant defendant in an ejectment, who being after non-suited, the costs were tacked thereon,	202
Rule for judgment <i>nisi</i> in ejectment,	203
To refer to the matter to compute the rent arrears, and tax the costs of the lessor in an ejectment,	204
Rule to amend a record after errors assigned in the exchequer chamber,	260
Rule of court to make a new <i>nisi prius</i> record, <i>possea</i> and <i>habeas corpus jurator</i> in a real action, the original being lost,	523
Rule to make and file a new roll of all the proceedings, whereon a judgment given on a demurrer was signed and entered, the original roll being lost after a writ of error brought in the house of lords,	<i>ibid.</i>
Rule to amend an original,	<i>ibid.</i>
Rule to amend errors assigned,	524
Rule for a prisoner to plead,	436
Rule to expedite the determination of a cause, where the court was divided,	524
Rule of court to submit to an award,	97
Rule of reference made at the sittings to refer a cause to counsel,	<i>ibid.</i>

Release.

Release of errors pleaded. Replication <i>non est factum</i> and issue,	229
Another,	229, 230

Relicta Verificatio.

<i>Relicta verificatio</i> after the general issue pleaded, & <i>cogn' action</i> thereupon,	493
--	-----

Remissa Damna, Remission of Damages.

<i>Remissa dampna</i> in ejectment,	194
After verdict,	486
After inquiry,	486, 487

The T A B L E.

Replevin. Vide Suggestion. Abatement.

Count in replevin of cattle taken, *Page* 357, 359
 Cognizance for damage-feasant, demurrer. Bar justifies the taking of a toll, 376
 Demurrer general and joinder, 377
 For taking a mare in the king's highway; cognizance as bailiff of the lord *Lempster*, who took them damage-feasant. Replication maintains his count, 351, 352
 Demurrer in abatement, and joinder, judgment for plaintiff, affirmed in error, *ibid.*
 Replevin for goods in the borough-court of *Windfor*, held by letters patent, 353, 356
 Plea, property in a stranger, demurrer and joinder, judgment for defendant, 354, 355
 The like, 357, 358
 Replevin of goods and cattle, avowry for a distress for rent on a lease for a year. Replication that the rent was not in arrear and issue, 356, 357
 Replevin of cattle, plea property in a stranger, and traverses the plaintiff's property. Replication, that property is in plaintiff, and issue. The like and traverse. Like replication, 357, 358
 Avowry and cognizance for damage-feasant. Bar prescription for common, when the land lies fallow. Replication and traverses the putting in seven sheep only. Rejoinder and issue on the traverse, 359, 360
 Cognizance as bailiff for rent-charge and fealty. Bar, defendant not seised of the services, replication and issue, 360
 Count in replevin for cattle, avowry and cognizance for a distress for non-payment of an amercement at a court-leet for stopping up a way. Bar, no such way stopt up, demurrer special and joinder, 363
 Avowry that the place in which, &c. is defendant's freehold. Bar, that it is a common, and prescribes for all cattle levant and couchant; replication traverses the common alledged. Rejoinder, issue and traverse, 365

VOL. II.

Cognizance justifies for common for all rother beasts, from such a time to such a time; distress for breach of the custom. Bar, that the close is in plaintiff's manor, and traverses it in defendant. Replication and issue, *Page* 367
 Avowry for damage-feasant. Bar, prescription for common for all horse beasts from *May-day* to *Candlemas-day*. Replication and traverse the common, rejoinder and issue, 368
 Cognizance for a fine imposed at a court-leet for not holding of constable, and a distress for it. Demurrer general and joinder, 369
 Avowry and cognizance, damage-feasant. Bar, that the place in which is copyhold, and on his admission thereto, put in his cattle. Replication that the cattle were distressed by the lord for plaintiffs, 371
 Fine for his admission to the copyhold, rejoinder the fine unreasonable, and that he tendered a year's value of the land, which was a reasonable fine, which the lord refused. Demurrer special and joinder; judgment for plaintiff, 371, 372, 373
 Avowry by tenant by *elegit* for damage-feasant, 374
 Count in replevin upon a *recordare fac' loquelam*, with intent to have costs, the damages in the plaint being under 40 s. 375
 Cognizance by overseers for a poors rate, replication *de injur' sua propria* and issue, 349
 Count in replevin for goods cast on the sea-shore; which plaint was removed out of the county-court into the king's bench by *recordare*, *ibid.*
 Avowry for salvage. Bar *de injur' sua propria*, 350

Rescous.

Declaration for a rescous of cattle distressed for rent, 377

Respondens Ouster.

Respondens ouster after a demurrer to a plea in abatement, 4, 492
 M m The

The T A B L E .

The like after a replication in abatement,

Page 151

Another, in a writ of *ail*, 92

Another, in case, and judgment by default, and inquiry awarded, 472

Another, in a *quare impedit*, 344

Responsio.

Several pleas to one declaration pleaded by one defendant, pursuant to the late act, 106

Restitution.

A writ of restitution and *superseas* after outlawry reversed, 634

Another, *ibid.*

A writ of restitution of possession, because the writ of *habere facias possessionem* issued erroneously, 635

Retainer.

Retainer pleaded by an administrator, 216

In *assumpsit* by an attorney. A special retainer set forth, 27

Retorn' Habend'.

Retorn' habend' after judgment for the defendant upon a demurrer in replevin, 636

Another, upon the plaintiff's default in replevin, 637

Reversal.

The entry of *reversal* of a judgment for error, 227

Reversal of a judgment on an indictment for high treason, 242

Judgment for reversal of an outlawry, 465

Riens per Discent.

Nothing by discent, except, 112

Another, replication that he hath assets, and issue, 147

Rule. Vide Regula.

S.

Satisfaction.

The form of a satisfaction-piece, P. 481

The entry thereof on the roll, 483, 486

Satisfaction acknowledged of part pleaded, 443

Scire facias.

Scire facias to repeal letters patent, 411

Scire facias awarded to hear errors, 222, 228

Another and *scire feci* returned, and defendant makes default, 245

Scire fec' returned to a *scire facias* by original in the king's bench,

Scire facias quare executionem non for the defendant in a writ of error, 665

Scire facias against bail on a recognizance of bail in debt in the common pleas, 380, 403

Scire facias & testatum against tertenants, *scire feci* and judgment by default, 388, 389

Scire facias for an executor against an heir and tertenants, and special pleadings, 381

Testatum scire facias against an heir and tertenants in several counties, plea the testator outlawed, 385

Scire facias against one bail in debt in the king's bench, 387

Scire facias against an heir and tertenants, return that there are no tenants, 384

The like to another county, return *scire feci M. H. tenant, &c. nil dicit* and judgment, 386

Scire facias quare executionem non for executors on a judgment recovered by the testator in the common pleas, revived by the executors and removed into the king's bench by writ of error, 389

Scire feci returned, plea, no such record, replication, there is such a record, and issue, 390, 391, 473

Scire facias against bail on a recognizance in a writ of error on a judgment given in the king's bench and affirmed in the exchequer-chamber, 390

Plea that the judgment was in *Middlesex*, and not in the county of *Stafford*, 392

Plea

The T A B L E.

Plea by a tertenant that the defendant was not seised of the land at the time of the judgment, <i>Page</i> 391	The like in case against administrator, where defendant died after judgment, <i>Page</i> 640
Plea another <i>scire facias</i> pending, replication, a discontinuance of that writ, 392	The like <i>quare executionem non</i> upon a judgment in the common pleas in debt affirmed on error in the king's bench, 640
Rejoinder, no such record of discontinuance, surrejoinder, there is such a record, 393	The like in a county court to assign errors in the king's bench, 641
<i>Scire facias</i> against two bail, one makes default, the other pleads, defendant in the action surrendered himself to the Fleet in discharge of his bail, demurrer and joinder, contin' judgment, <i>ibid.</i>	<i>Scire facias</i> upon a judgment in the common pleas in the time of the late king, removed by error into the king's bench, 641
Plea, payment of the money recovered, 393	<i>Scire facias quare restitutionem non</i> , 641
Judgment by default on a <i>scire facias</i> in ejectment on a double demise, 394	<i>Scire facias</i> against the late sheriff, why the money levied upon a <i>feri facias</i> ought not to be paid, 642
<i>Scire facias versus</i> tertenants, return of the sheriff, the tenements and lands held by them; plea that the defendant in the original judgment had nothing at that time in land; replication that he was seised in fee, and special verdict for the plaintiff, 398, 402	<i>Scire facias</i> against bail in the common pleas; plea by one <i>nul tiel record</i> , replication and issue; judgment against the other by <i>nil dicit</i> , 404
<i>Scire facias ad audiend' errores</i> on a writ of error on a judgment in a <i>scire facias</i> against the bail in Maidstone court, 403	<i>Scire facias</i> upon a recognizance upon a writ of error removed by <i>certiorari</i> from the common pleas into the king's bench, 643
<i>Scire facias</i> returned in error, <i>ibid.</i>	<i>Scire facias ad audiendum record'</i> upon a writ of error out of the common pleas, on a judgment against an heir and tertenants, 644
Another on a writ of error out of Ireland, 394	The like <i>ad audiendum errores</i> upon a writ of error to reverse an outlawry in the king's bench, 644
<i>Scire facias</i> against bail, plea by one defendant no <i>ca' sa'</i> , and by the other defendant a <i>feri facias</i> executed; replication, a <i>ca' sa'</i> sued out, and no <i>feri facias</i> sued out, and issue, 395, 397	<i>Scire facias</i> against bail upon a recognizance upon a writ of error returnable in the exchequer-chamber, 644
Plea to a <i>scire facias</i> against bail on a recognizance, that he was personated before the judge by another of the same name, 398	<i>Scire facias</i> for an administrator upon a judgment in the common pleas, affirmed upon a writ of error in the king's bench in the life of the intestate, 645
<i>Scire facias</i> brought by an executor, upon a judgment in the king's bench, affirmed in the exchequer-chamber in the time of the testator, 638	The entry of the pleadings upon a <i>scire facias</i> brought by an administrator upon a judgment in the king's bench, affirmed in the exchequer chamber in the life of the intestate, 646
<i>Scire facias</i> for a surviving executor to hear errors in the exchequer-chamber, where the other executor died after judgment recovered, 638	<i>Scire facias ad audiendum errores</i> upon an outlawry pronounced, 647
The like in debt for an executrix against an executrix upon a judgment recovered by the testator in a former king's reign, 639, 640	<i>Scire facias</i> against an administrator, why damages ought not to be assessed where the defendant died before the return of the writ of inquiry, 647
<i>Scire facias</i> upon a judgment in debt, 640	<i>Scire facias in audita querela</i> upon the late statute, 648
	The like to revive a judgment in an assize of <i>novel disseisin</i> , 648
	M m 2 The

The T A B L E.

- The like, for an executor against an heir and tertenants, and special pleadings thereupon, Page 649
- The like *quare restitutionem non* after judgment reversed by a writ of error, 650
- Scire facias ad audiendum errores* upon a writ of error to reverse a common recovery, 651
- Scire facias* against an administrator upon a judgment in debt, where part of the debt was levied upon a *feri facias* in the life of the intestate, 652
- Scire facias* in an affize of *novel disseisin* for an administrator, for damages adjudged in the common pleas, and that judgment afterwards reversed in the king's bench, and that reversal afterwards reversed in parliament, &c. and the pleadings thereupon, 653
- Scire facias* in debt for an executor, and special pleadings therein, 654
- Plea to a *scire facias*, a *ca' sa'* sued out and executed, 655
- Scire fa ias* upon a judgment on a recognizance upon *capias* in the common pleas after a writ of error, 657
- Plea is not tertenant, 656
- Scire facias* against one bail in debt, 657
- The like *quare executionem non* on a judgment in *formacion*, removed by writ of error from the common pleas into the king's bench, 658
- The like, against an executor for costs upon quashing a writ of error in the life of the testator, 658
- Scire fa ias* for a surviving plaintiff, 658
- The like, against executors, where the defendant died after judgment recovered, 659
- The like, against tertenants after judgment recovered in the time of the late king, *ibid.*
- Scire facias* for a surviving executor against tertenants after judgment recovered in the life of the testator, *ibid.*
- The like, after a year and a day, upon a judgment for the defendant in ejectment, *ibid.*
- Scire facias ad audiendum errores* assigned by the heir, 661
- The like, *ad audiendum errores* upon a judgment on a *scire facias*, in the time of the late king, from *Maidstone* court, 403, 660
- Scire facias* upon a judgment in the *Tolse* court of the city of *Bristol*, removed by error into the king's bench, Page 660
- The like, to hear errors in the exchequer chamber, 661
- The like, *quare executionem non* in replevin, *ibid.*
- Scire facias quare possessionem non* in ejectment, on a judgment in the common pleas, removed by writ of error, and special demurrer thereto, 397, 661
- Testatum scire facias* for an executor against tertenants, 662
- The like, in case *quare executionem non* directed to the chamberlain of the county palatine of *Chester*, *ibid.*
- The like, *ad audiendum errores* on a judgment in the common pleas for words, 663
- Scire facias quare execution' non* in debt, plea, a *feri facias* sued out and executed. Replication *non feri fecit* and issue, 394
- Scire facias* against an administrator in debt after judgment in the common pleas, affirmed in the king's bench. Return *sci' feci*; plea, that the administration was fraudulently obtained; demurrer, 405, 406, 664
- Scire facias* against bail in the common pleas, on a *clausum fregit*, original,oyer of the *scire facias*, oyer of the recognizance, oyer of the original, and judgment against the principal plea, no judgment against the principal, before the *scire facias* issued. Replication, judgment against the principal, demurrer special, 406, 408, 410
- Scire facias ad satisfaciendum* in the exchequer; plea, conditions performed specially. Replication and breach in not paying the money; rejoinder payment to plaintiff's order, surrejoinder did not pay; demurrer, 419, 422
- Scire fier' Inquir'.**
- Fieri facias* against an administrator in debt after judgment affirmed in error in order to sue a *sci' fieri inquir'*, 661
- Sci' fieri inquir'* and recital of the *sci' fa'*, 664
- Another, plea a *devastavit*, 667
- Plea *plene administravit*, and traverses the *devastavit*, replication and issue, *ibid.*

The T A B L E.

Simony.

Replication by the attorney general
in simony, Page 345

Solvit ante diem, Et solvit ad diem.

Payment before the day, and payment at
the day.

Solvit ad diem by a third person pleaded to
a bond, 173, 480, 423

Replication *non solvit* and issue, *ibid.*

Solvit ante diem, demurrer and joinder,
228

Solvit ad diem, replication and issue, 482,
493

Payment of part pleaded to an action on a
promissory note, *ibid.*

Son Assault.

Son assault demesne specially pleaded,
481, 456

Another, replication *de injuria sua propria*,
470, 480

Son assault pleaded by a constable, 481

Subpoena.

Subpoena in London, 668

The like in *Middlesex*, 669

Subpoena on a writ of inquiry, *ibid.*

Subpoena in *Middlesex* sent to two witnesses
in Ireland to give their evidence in a
cause tried in *Middlesex* in England,
ibid.

Subpoena at the affizes, 670

Subpoena in an affize, *ibid.*

**Suggestion. Vide Abatement. Assault
and Battery. Errors. Hays. Pro-
hibition. Replevin. Scire facias.**

That the king's writ runs not in the
county palatine of *Chester*, 218, 430

That the record is falsely certified, 245

Suggestion *pro return' habend'* as bailiff of
A. B. who took the cattle damage-sea-
fant, 376

Death of one of the plaintiffs in replevin
suggested after issue joined, 350

Suggestion *pro return' habend'*, Page 347.
358, 376

Of the death of one of defendants in the
action, 490

That plaintiff is one of the sheriffs of
London, and *Venire* awarded to the other
sheriff, 483

That the bailiffs of the corporation are
parties to the suit. And also the cor-
oners of the city of *Coventry*. *Venire*
awarded to *essiers*, i. e. persons chosen
by the court, 143

Suggestion of the death of a plaintiff and
one defendant of a writ of error, 490

Suggestion of the death of one of the de-
fendants in error, and *in nullo est error'*
pleaded, 217

Of the death of the plaintiff in the judg-
ment suggested in a plea to the *scire*
facias, 399

That the issue ought to be tried in another
county than where the action is laid,
430

Suggestion in error, death of plaintiff,
who made his will, and an executor who
proved the will; and then pleads *in*
nullo est erratum, 234

Summoniti facias.

A writ of summons on a bill filed against
a member of parliament in the king's
bench, 502, 670

Superfedeas.

Superfedeas to an attachment of privilege
of clerk of the king's bench, 671

The like, to the marshal of the king's
bench, where the defendant was brought
by *habeas corpus*, and plaintiff not de-
clared in three terms, was *non pros'd.*
and defendant on filing common bail
was discharged, *ibid.*

Superfedeas to the sheriff to discharge a
prisoner, because the plaintiff did not
declare within two terms, 672

Superfedeas upon defendant's filing com-
mon bail, *ibid.*

Superfedeas to discharge defendant upon
his having procured good bail, *ibid.*

Superfedeas to the warden of the Fleet to
discharge a prisoner taken upon a bill
of *Middlesex* in the liberty of the bailiff
of

The T A B L E.

of *Westminster*; against whom there was no declaration in two terms, *Page* 673
Superfedeas for delivery of body and goods, where an outlawry is reversed, *ibid.*
Superfedeas to a *ca' sa'* erroneously issued, 674

Surrender. *Vide* Copyhold.

Surrender of copyhold land to uses, 205

T.

Taliter Process'.

Taliter process' that judgment was affirmed on a writ of error, 162
 Another, 111, 562, 601

Tender.

Tender pleaded in debt for rent, 164
 Pleded to a *quantum meruit*. Replication and issue, 470
 Replication, tender of amends before the action brought, 439
Uncore prift a render dower, 189

Traverse.

Traverse of a prescription, 360, 431
 Of a highway, 439
 Of freehold and issue, 441
 Of a custom and issue, 444
 Of marriage, rejoinder and issue, 2, 123
 The death of one of the plaintiffs in error, 228
 Traverse of institution and induction, and issue, 341
 Of simony, 345
 Another, 126, 327
 That defendant is not guilty of any other trespass, than what he's justified for, 445

Trespass. *Vide* Bar.

Count in trespass, where the plaint is removed by *recordare* for the plaintiff to have his costs, the damages being under 40s. 375

Trespass for breaking plaintiff's close, cutting trees, digging ditches, subverting the soil with cattle. Bar licence to dig in plaintiff's soil, and prescription for a way; replication and three issues taken; verdict for the plaintiff, *Page* 425, 428

Clausum fregit. Bar, that it is the freehold of a stranger, and prescribes to fish with nets. Replication *de injuria sua propria*, and traverses the prescription. Rejoinder, issue, and special verdict, 431, 434

Trespass in consorting with another man's wife, 434

Count in trespass in the king's bench where the cause was removed out of the county-court, where *liberum ten'tum* was pleaded, 437

Clausum fregit and taking away hay set out for tithes 437

Claus. freger' and digging coals, &c. justification, the close a common highway. Replication and traverse the way. Rejoinder and issue on the traverse, 438, 439

Domum fregit & cl'um with a continuance, justification as to the house, that it is a common alehouse: And as to the close, pleads tender of amends before the action brought, 439

Declaration by an infant by his next friend, for assaulting his servant. Not guilty, 440

Clausum fregit and lopping trees, justification by one defendant, *at lib'um ten'tum suum*, by the other defendants as servants; replication *lib'um ten'tum* of plaintiff, and traverses the freehold of defendant, and issue on the traverse, 440

For carrying away and detaining *vi & armis* plaintiff's wife, 441

The like, for taking and detaining plaintiff's wife and goods, 441

For taking cattle; justification, plaintiff indebted to J. S. who sued him to execution in the wapentake-court, and levied the goods. Replication *de injuria sua propria*, and issue, 442

Trespass for breaking and hunting in the plaintiff's close, 444

Trespass *clausum freger'* and treading down the plaintiff's grass, &c. with a con-

The T A B L E.

continuance, justification common in a field till resown; replication <i>de son tort</i> , and traverses the custom. Rejoinder and issue on the traverse,	Page 444
Justification of an assault by a constable in the execution of his office,	445
For breaking the plaintiff's house, fixing posts in the wall, breaking the cellar door, &c.	446
Trespass against the agents of the <i>East India</i> company for taking defendant's ship and goods,	447
Trespass and false imprisonment until he paid 5 s. 8 d. justification that plaintiff rode over defendant's lands, and refused to make him amends, so stopped him till he paid,	447
For mesne profits by the plaintiff in ejectment,	454, 455
Trespass for fishing in the plaintiff's several fisheries,	449
<i>Clausum fregit</i> , &c. with a continuance until he paid a fine; as to the fine not guilty; as to the residue, justification for damage-feasant by lessee for years,	435
Justification for a way which he had and ought to have,	452
Count for taking barrels of beer. Justification by virtue of a plaint,	442
Trespass for tearing a bill of exchange,	445

V.

Venire facias.

<i>Venire</i> awarded on an issue in error,	228,
	229
<i>Venire</i> in <i>scire facias</i> ,	675
The like in <i>London</i> ,	675
The like in <i>Middlesex</i> ,	675
The like at the assizes,	256
<i>Venire</i> awarded in a replevin,	350, 351
<i>Venire</i> at the assizes in debt by proviso,	676
The like as well to try the issue, as to inquire of damages,	57
<i>Venire</i> awarded to elizors, defendant being sheriff, and coroner also,	143
<i>Venire</i> awarded, the sheriff <i>non misit breve</i> , alias <i>venire</i> awarded,	256
<i>Venire</i> awarded in dower,	269

In a <i>quare impedit</i> ,	Page 345
<i>Venire</i> awarded <i>de novo</i> ,	270, 406
<i>Venire</i> awarded <i>de corpore com'</i> ,	228
<i>Venire</i> to try two issues,	121, 448
<i>Venire</i> awarded on a <i>scire facias</i> ,	397,
	400
Awarded to the next <i>English</i> county; the issue arising in <i>Wales</i> ,	506
<i>Venire</i> continued for default of the jurors on a trial at bar,	507

Verdict Special and General. *Vide Postea*.

Verdict special in a <i>scire facias</i> against tertenants,	401
On a trial at bar,	507
On a trial at bar in <i>Ireland</i> ,	273
Verdict that the contract is simoniacal,	346

View.

The entry on the roll of a view in trespass, after a juror withdrawn,	489,
	492
Of a view before trial, pursuant to the late statute,	474

Unica Taxatio Damptorum.

One taxation of damages, and a <i>cessat</i> until the issue tried,	137
---	-----

Uses.

A deed to lead the uses of a fine, and recovery pleaded,	196, 201
--	----------

Utlagar.

Præcipe for an original in case,	458
The manner of reversing an outlawry for want of the writ of proclamation,	458
The <i>capias</i> , alias, <i>pluries</i> , exigent and proclamation in order to outlawry,	459,
	460
Writ of errors, assignment of errors, and all the proceedings to reverse an outlawry,	244, 461, 463
The like after judgment in the common pleas,	463
<i>Capias utlagatum</i> special and inquisition thereupon,	465

The T A B L E.

W.

Wager of Law.

Declaration against the defendant as the plaintiff's bailiff; bar that he never was his bailiff; judgment thereupon that the defendant wage his law, and the plaintiff non-pros'd, *Page* 467
Plea *nil debet per legem*, and the defendant brings his law and has judgment, 468

Warrant of Attorney. *Vide* Certiorari.

Warrant of attorney, plaintiff and defendant in debt, 214, 255
Another in case and trespass, 429
Warrant of attorney by the university of *Oxford* to authorize an attorney to prosecute and defend, 525
By a sheriff, pursuant to the stat. of 23 *H. 8.* 525
Warrant of attorney in a prohibition, 316
For an infant, who sues by his next friend, 429

Warranty.

A special warranty, 138

Withernam.

A *capias* in *withernam* and return thereupon, 553

Writs of Error.

A writ of error in debt, returned in the exchequer chamber on a judgment in the king's bench, 213
In dower, 268, 287
The like, returnable in parliament, and return of the chief justice, 254, 276, 292

Another *coram vob'* *Page* 220, 231, 232

In debt *qui tam*, 222

Writ of error to the chief justice of the king's bench in *Ireland*, returnable in the house of lords in *England*, on an indictment for high treason, 258

In replevin, *ibid.*

In a *quare impedit*, 344

Writ of error by the bail *tam in redditione judicii* against the principal *quam in adjudicatione*. Execution on the *scire facias*, 378

Writ of error to remove a judgment in ejectment in the king's bench in *Ireland* given in a former king's reign, 271, 272, 290

Another in debt, suggesting the death of the plaintiffs and defendants; and that the now plaintiff in error is heir at law, 238, 239, 291

Writ of error in parliament in a judgment in the king's bench on a *mandamus*, 248

Another on a judgment in case, given in the common pleas, and affirmed by the king's bench, 292

Writ of error to reverse an outlawry, 461

Writ of error to the chief justice of the king's bench in *Ireland*, to remove a judgment in an indictment for high treason, returnable in the king's bench in *England*, 238, 240

The like, returnable in parliament to reverse the reversal of the judgment in the indictment, 242

Writ of error to reverse a fine for death, before the king's silver is paid, 280, 281

Writ of error in dower out of *Ireland*, 287

Writ of error for the king, returnable in the council chamber on a judgment in a *scire facias ad satisfaciend.* 428

F I N I S.

